

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

JANUARY TERM, 1906.

No. 1630. **405**

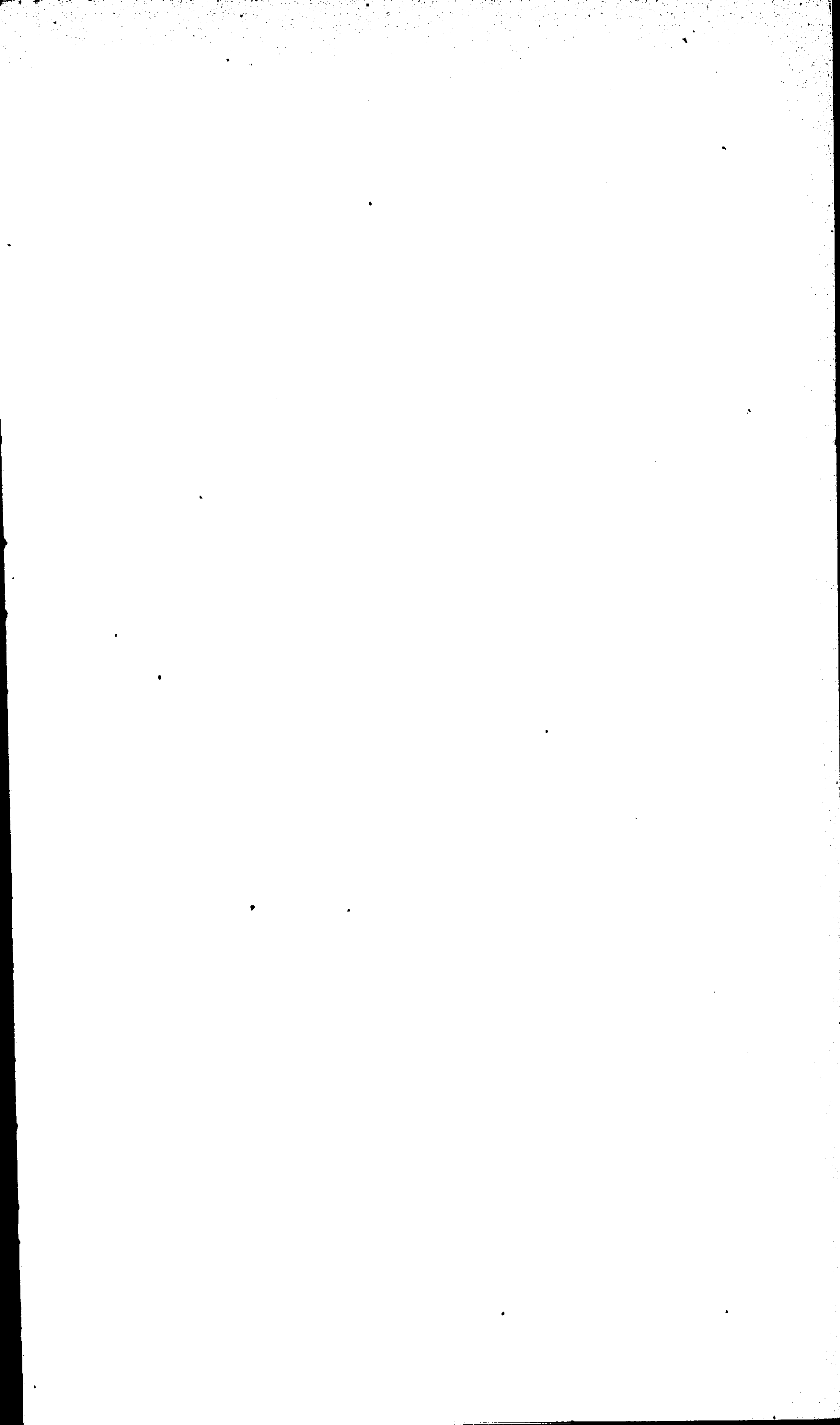
CHARLES F. JOHNSON, APPELLANT,

vs.

CHARLES E. TRIBBY

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 29, 1905.



COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JANUARY TERM, 1906.

No. 1630.

CHARLES F. JOHNSON, APPELLANT,

vs.

CHARLES E. TRIBBY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia

CHARLES F. JOHNSON, Appellant, }
vs. } No. 1630.
CHARLES E. TRIBBY. }

a Supreme Court of the District of Columbia.

CHARLES E. TRIBBY, Complainant, }
vs. }
ANNIE LEE BEVERLEY, ELIZABETH LAW- } No. 24997. In Equity.
rence Talty, and Charles F. Johnson, }
Defendants. }

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Original Bill of Complaint.*

Filed November 1, 1904.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

CHARLES E. TRIBBY, Complainant, }
vs. }
ANNIE LEE BEVERLEY, ELIZABETH LAW- } Equity. No. 24997.
rence Talty, and Chas. F. Johnson, De- }
fendants. }

To the Supreme Court of the District of Columbia, Holding an Equity Court:

The complainant, Charles E. Tribby, respectfully states as follows:

1. He is a citizen of the United States, a resident of the District of Columbia, and brings this suit in his own right.

2. The defendants, Annie Lee Beverley, Elizabeth Lawrence Talty and Charles F. Johnson; are all citizens of the United States, residents of the District of Columbia, and are sued in their own rights respectively, as will hereafter more fully appear.

3. The property which constitutes the subject matter of this suit is Lot One Hundred and Fifteen (115) in Clarence F. Norment's sub-

division of Square Twelve Hundred and Forty-two (1242), in the City of Washington, District of Columbia, as per plat recorded in the office of the Surveyor of the District of Columbia, in Liber 28, Folio 158, which is improved by a building containing two apartments or flats and being known as Number 3036 O Street, N. W., Washington, D. C.

4. The above described real estate is owned by the defendant Beverley for the term of her natural life and the remainder is owned by the defendant Talty in fee simple, as more fully appears from a deed from Edward F. Croggon, unmarried, to said defendants, Beverley and Talty, dated April 19, A. D., 1904, recorded April 23, A. D., 1904, in Liber No. 2815 at folio 182, *et seq.*, one of the land records of the District of Columbia, which deed is hereto annexed, marked Exhibit "A" and prayed to be read as a part hereof, and the said real estate is encumbered by two deeds of trust, one given September 10, A. D., 1903, to secure the payment of one note for \$4750.00, of even date therewith, payable three years after date, with interest at the rate of $4\frac{1}{2}\%$, payable semi-annually, and the second trust given October 5, A. D., 1904, to secure payment of eight notes of \$45.60, of even date therewith, payable from one to eight months after date, respectively, with interest at the rate of 6 % after maturity.

5. Heretofore, to-wit, on the 6th day of October, A. D. 1904, the defendants Beverley and Talty entered into and made an agreement and contract with Charles E. Tribby, the complainant herein, by which they and each of them agreed to sell and convey to the complainant on the 8th day of October, A. D., 1904, all of their respective interests in and to the aforesaid real estate for and in consideration of the sum of Fifty-three Hundred Dollars (\$5300), and by the said agreement the said consideration was to be paid by the complainant assuming the two trusts on the said real estate hereinbefore mentioned, (the interest thereon, the taxes, the water rent, and the rents accruing from said property to be adjusted to the 8th day of October aforesaid) and the residue to be paid in cash jointly to said defendants, Beverley and Talty.

6. At the time of the making of the agreement and contract of sale aforesaid, to-wit, on the 6th day of October, A. D., 1904, the complainant paid to the defendants, Beverley and Talty, the sum of Fifty Dollars (\$50.00) and the said amount was received by said defendants, Beverley and Talty as a deposit on account of said contract, and immediately thereafter complainant prepared to consummate said agreement, and from time to time at the instance and request of said defendants, Beverley and Talty, complainant paid to them further sums amounting to Seventy Dollars (\$70.00) which was received by them on account of said contract.

7. Thereafter, to-wit, on the 8th day of October A. D. 1904, complainant having completed all arrangements, and being then ready and willing to carry out his part of the said agreement, requested the defendants, Beverley and Talty, to carry out their contract and agreement, but they failed to do so. Thereafter, to-wit, Oct. 13th, 1904, the defendants, Beverley and Talty called at complainant's

office and complainant then and there tendered himself ready and willing to pay to the said defendants, Beverley and Talty, the sum of One Hundred and Ten 19 / 100 Dollars, which was found
4 to be the sum to be paid to the defendants under said agreement; and also, at the same time exhibited to the said defendants, Beverley and Talty, a deed of said property from said defendants to complainant, which said deed is hereto annexed, marked Exhibit " B " and prayed to be read as a part hereof, and requested them to sign and execute the same, and in every other respect complainant was ready and willing to and offered to comply with the terms of said agreement; but the defendants Beverley and Talty, and each of them then and there declined to sign and execute said deed and receive said money, and requested that the final settlement be temporarily delayed or postponed. Thereafter, to-wit, on October 28th, A. D., 1904, complainant received a letter from defendants, Beverley and Talty, finally declining and refusing to fulfill the terms of said contract and agreement. Thereafter, to-wit, on the 26th day of October, A. D., 1904, the defendants, Beverley and Talty, made and executed a paper writing purporting to be a deed in fee simple of said real estate to the defendant Charles F. Johnson, for a named consideration of \$10.00, subject to the existing encumbrances, which said paper writing was on the 28th day of October, 1904, filed for record in the office of the Recorder of Deeds for the District of Columbia.

8. Complainant alleges that the said pretended conveyance aforesaid to Charles F. Johnson was made by the defendants, Beverley and Talty, without the knowledge, consent, or acquiescence of the said defendant Johnson, and that he was not aware of the fact that such conveyance had been attempted until after the said paper writing described in the Seventh paragraph of this Bill from
5 defendants, Beverley and Talty, to him had been recorded, and the complainant charges that the defendants, Beverley and Talty, conspire-, confederated and combined together to defraud the complainant of all his interest and rights in and concerning said contract and agreement and in and to said real estate. And in pursuance of this said unlawful and fraudulent design, without any notice whatsoever to or knowledge on the part of complainant and without his consent, the said defendants, Beverley and Talty made the said pretended conveyance to the said defendant Johnson and had the same recorded as aforesaid, without his knowledge and consent. Complainant further charges that said paper writing purporting to be a deed was a mere form and pretense, and that the consideration of Ten Dollars (10.00) alleged therein was not in fact paid; and complainant further charges that the execution of said paper writing to said Johnson was without any consideration whatever, and for the sole purpose of defeating the complainant's rights to bring an action against defendants, Beverley and Talty, for the specific performance of the contract hereinbefore referred to, by making it appear that the said property has been transferred by a *bona fide* sale to an innocent purchaser. Complainant further alleges that if this purpose is accomplished he will be deprived of all

rights under said contract, as defendants, Beverley and Talty, are pecuniarily irresponsible and cannot respond in damages.

9. Complainant further alleges that he has tendered himself ready and willing to *and* in every manner whatsoever fulfill his part
6 of the said agreement and contract and has been ready and willing at all times since the making thereof and still is ready and willing to perform his part of said contract and agreement and now is able and tenders himself ready and willing to perform the same, but the defendants, and each of them, have refused and still refuse to fulfill their part of the agreement and contract, to the great and irreparable injury and damage of complainant.

Wherefore, as he has no just, plain, complete and adequate remedy at law, complainant respectfully prays:

First. That the defendants, Annie Lee Beverley, Elizabeth Lawrence Talty and Charles F. Johnson, and each of them, be enjoined and restrained from conveying away, incumbering, or in any wise dealing or interfering with said Lot One Hundred and Fifteen (115) in Clarence F. Norment's subdivision of Square Twelve Hundred and Forty-two (1242) in the City of Washington, District of Columbia, as per plat recorded in the office of the Surveyor of the District of Columbia, in Liber 28, folio 158, otherwise than in accordance with orders and decrees of this Court.

Second. That the paper writing purporting to be a deed from the defendants, Beverley and Talty, dated October 26, A. D., 1904, and recorded October 28, A. D., 1904, among the land records of the District of Columbia, purporting to convey said Lot One Hundred and Fifteen (115) in Clarence F. Norment's subdivision of Square Twelve Hundred and Forty-two (1242) as aforesaid, to defendant
7 Charles F. Johnson be vacated, cancelled and set aside as fraudulent and fictitious and therefore null and void; and that the defendants Beverley and Talty be required by decree of this Honorable Court to specifically perform their said contract entered into by them with the complainant, Charles E. Tribby, and to execute and deliver to said complainant a deed in fee simple of the said Lot One Hundred and Fifteen (115) in Clarence F. Norment's subdivision of Square Twelve Hundred and Forty-two (1242) in the City of Washington, District of Columbia, as aforesaid, upon his payment to them of the sum found to be due, in accordance with said contract and agreement, less the costs therein expended by the complainant.

Third. And for such other and further relief in the premises as the nature of the case may require.

And to this end that the defendants Annie Lee Beverley, Elizabeth Lawrence Talty and Charles F. Johnson and each of them, be required by subpœna of this Honorable Court to appear and answer the exigencies of this Bill, answer under oath being hereby waived.

The defendants to this bill are :
 Annie Lee Beverley,
 Elizabeth Lawrence Talty, and
 Charles F. Johnson.

CHARLES E. TRIBBY,
Complainant.

HOWARD BOYD,
 O. P. M. BROWN,
Solicitors for Complainant.

8 DISTRICT OF COLUMBIA, *To wit :*

Charles E. Tribby, being first duly sworn, deposes and says that he is the complainant in the above entitled cause; that he has read the foregoing bill by him subscribed and knows the contents thereof; that the matters and things therein stated upon his personal knowledge are true, and those stated upon information and belief he believes to be true.

CHARLES E. TRIBBY.

Subscribed and sworn to before me this 31st day of October, A. D. 1904.

[NOTARIAL SEAL.]

WM. L. F. KING,
Notary Public, D. C.

9

EXHIBIT A.

TRIBBY
 vs.
 BEVERLEY ET AL. }

This Deed, Made this Nineteenth day of April in the year one thousand nine hundred and four by and between Edward F. Croggon, unmarried, of the District of Columbia, party of the first part, and Annie Lee Beverley of the District of Columbia, party of the second part; and Elizabeth Lawrence Talty, of the District of Columbia, party of the third part.

Witnesseth, That in consideration of Ten (\$10.00) Dollars, the party of the first part does grant unto the parties of the second and third parts in fee simple, all that piece or parcel of land in the City of Washington, District of Columbia, described as follows, to wit: Lot numbered One Hundred and Fifteen (115) in Clarence F. Norment's Subdivision of lots in Square numbered Twelve Hundred and Forty-two (1242) as per plat recorded in the Office of the Surveyor of the District of Columbia in Liber 28 Folio 158, Subject to existing encumbrances, together with the improvements, rights, privileges and appurtenances to the same belonging. To have and to hold the above described land and premises unto and to the only use of the party of the second part for her natural life only, and in remainder after her death to the said party of the third part, her heirs and assigns forever.

And the said party of the first part covenants that he will warrant specially the property hereby conveyed; and that he will execute such further assurances of said land as may be requisite.

10 Witness his hand and seal the day and year hereinbefore written.

EDWARD F. CROGGON. [SEAL.]
Unmarried.

In presence of—
DAVID E. MOORE.

DISTRICT OF COLUMBIA, *To wit:*

I, David E. Moore a Notary Public in and for the District of Columbia, Do Hereby Certify that Edward F. Croggon, unmarried, of the District of Columbia, party to a certain Deed bearing date on the 19th day of April 1904, and hereto annexed, personally appeared before me in said District, the said Edward F. Croggon being personally well known to me as the person who executed the said Deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this 19th day of April 1904.

[NOTARIAL SEAL.] DAVID E. MOORE. [SEAL.]
Notary Public, D. C.

Endorsed.

Received for Record on the 23 day of April A. D. 1904 at 11.57 O'clock A. M., and recorded in Liber No. 2815 at folio 182 *et seq.* one of the Land Records for the District of Columbia and examined by

WM. DUTTON,
Deputy Recorder.

MOORE & HILL,
Incorporated.
Real Estate, Loans & Insurance,
717 14th Street N. W.,
Washington, D. C.

M. A. N.

11

EXHIBIT B.

TRIBBY
vs.
BEVERLEY ET AL. }

This Deed, Made this 8th day of October in the year one thousand nine hundred and four by and between Annie Lee Beverley, a widow, and Elizabeth Lawrence Talty, both of City of Washington District of Columbia parties of the first part, and Charles E. Tribby of City of Washington, District of Columbia, party of the second part:

Witnesseth, That in consideration of the sum of Ten (10) Dollars, the parties of the first part do grant unto the party of the second part, in fee simple, all that piece or parcel of land in the City of Washington, District of Columbia, described as follows, to wit: Lot One Hundred and Fifteen (115) in Clarence F. Norment's subdivision of lots in Square Twelve Hundred and Forty-two (1242) as per

plat recorded in the office of the Surveyor of the District of Columbia in Liber 28, folio 158, together with all improvements thereon, together with the improvements, rights, privileges and appurtenances to the same belonging, subject to a first trust for Forty-seven Hundred Fifty Dollars (\$4750.00) from Harry Wardman, widower, to Odell S. Smith and Jacob N. Belt, Trustees.

And the said parties of the first part covenant that they will warrant specially the property hereby conveyed; that they are seized of the land hereby conveyed; that they have a right to convey said land; that the said party of the second part shall quietly enjoy said land; that they have done no act to incumber said land except the execution of a second deed of trust to Frank L. Attwell, which
 12 has been released and that they will execute such further assurances of said land as may be requisite.

Witness our hands and seals the day and year hereinbefore written.

_____. [SEAL.]
 _____. [SEAL.]

In presence of—

_____.
 _____.
 _____.

13 To the Supreme Court of the District of Columbia, holding an Equity Court:

This defendant, now and at all times hereafter, saving to *themselves* all and any manner of benefit or advantage of exception, or otherwise that can be taken, or had to the many errors, uncertainties and imperfections in the said petition contained, for answer thereto, or so much thereof as this defendant is advised, is material or necessary for *them* to make answer to, saith:

1 & 2. That he admits the allegations of paragraph- 1 & 2 of the Bill of Complaint.

3. That he denies the allegations of paragraph 3 of the Bill of Complaint.

4. Answering paragraph 4 of the Bill of Complaint this defendant denies that the property and real estate described and set out in paragraph 3 of the Bill of Complaint is owned by the defendants Beverley and Talty and further answering said paragraph says:

14 That he is the holder of the equitable interest in said real estate and property for the benefit of the owners of certain funds placed with their real estate agents, Willige, Gibbs and Daniel; that said funds have for some time past been placed with said real estate agents for safe and profitable investment, and on the 26th. day of October, A. D. 1904, the said agents purchased with said funds and for the benefit of the owners of said funds the said property described in paragraph 3 of the Bill of Complaint, subject to the two deeds of trust referred to in paragraph 4 of the Bill of Complaint.

5 & 6. That as to the allegations of the 5 & 6th. paragraphs of the

Bill of Complaint he has no knowledge, and prays that they be proved, if material.

7. This respondent admits that by deed duly executed and delivered the said property was conveyed to him, but says that he never held the property otherwise than for the benefit of the owners of said funds, and answering said paragraph further says:

That as to the other allegations of said paragraph he has no knowledge, and prays that they be proved, if material.

8. Answering paragraph 8 of the bill this defendant denies that he conspired, confederated or combined together with the defendants Beverley and Talty to defraud the complainant and further answering this paragraph says:

That the conveyance to him was a *bona fide* transaction made in good faith and for a valuable consideration.

15 That said property and real estate was purchased with the aforesaid funds which were placed with the real estate agents, Willige, Gibbs & Daniel, for investment purposes; that the said real estate agents have authority from the owners of these funds to make from time to time such investments as in their discretion and judgment are deemed prudent and profitable; that in all purchases of this and similar character it is and has been for some time past the custom to make purchases in the name of this defendant; this defendant to hold the same in trust for the owners of said funds; that it is understood and agreed by and between this defendant and the owners of said funds that he is to execute deeds and all other necessary papers whenever called upon to do so by said owners of said funds or their agents aforesaid; that whenever property is purchased as aforesaid it is conveyed to this defendant for the purpose of convenience and to avoid delay and trouble in making quick and profitable sales and transfers of same.

9. That as to paragraph 9 of the Bill he has no knowledge and prays that they be proved, if material, and he claims the same benefit of this objection as if raised by demurrer or plea.

And having fully answered he prays to be dismissed with his costs.

CHARLES F. JOHNSON.

WALTER C. BALDERSTON,

Att'y for Defendants.

16 I do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof, that the facts therein stated as of my personal knowledge are true, and those therein stated on information and belief, I believe to be true.

CHARLES F. JOHNSON.

Subscribed and sworn to before me this 17th day of November, A. D. 1904.

JOHN E. TAYLOR,

[NOTARIAL SEAL.]

Notary Public, District of Columbia.

To the Supreme Court of the District of Columbia, holding an Equity Court:

These defendants, now and at all times hereafter, saving to them-

17 selves all and any manner of benefit or advantage of exception, or otherwise that can or may be taken, or had to the many errors, uncertainties, and imperfections in the said petition contained, for answer thereto, or so much thereof as these respondents are advised, is material or necessary for them to make answer to, saith :

1 & 2. That they admit the allegations of paragraphs 1 & 2 of the Bill of Complaint.

3. That they deny the allegations in paragraph 3 of the Bill of Complaint.

4. These defendants deny that they are the owners of the property mentioned and set out in paragraph 3 of the Bill and referred to in paragraph 4 of the said Bill and further answering said paragraph 4 say :

That on or about the 19th day of April 1904, the said defendants became the owners of the said property and real estate as is shown by the plaintiff's Exhibit "A," subject, however, to a deed of trust of \$4,750.00. That thereafter, to wit, the 5th. day of October 1904, these defendants secured a loan of Three hundred six (\$306) dollars from the complainant, Charles E. Tribby, and gave their eight joint and several promissory notes therefor; that each and all of said notes were for the sum of \$45.60 each, making the total sum of the said eight notes \$364.80; the said notes were to bear interest at the rate of 6% per annum after maturity, and to secure the prompt and punctual payment thereof, the said defendants executed and delivered a deed of trust on said property and real estate to J. Clinton Tribby and M. M. Akers, Trustees, bearing date the 5th. day
18 of October, 1904; that it was understood and agreed by and between the complainant and these defendants, Beverley and Talty, that said notes could be paid either before or after maturity, at the option — these defendants or any one of them; that these defendants are advised the said amount so charged by the complainant for the said loan is unreasonable, unjust, usurious and contrary to law.

5. These defendants deny the allegations in paragraph 5 of the Complainant's Bill and further answering said paragraph 5 say :

That on or about the 5th day of October, A. D. 1904, and subsequent to the execution and delivery of the said deed of trust mentioned in paragraph 4 of this answer the said complainant, Charles E. Tribby, agreed verbally to and with these defendants to assume the two said deeds of trust, all costs, charges, and expense of every kind incident to the transfer, conveyance or sale of the aforesaid property and real estate mentioned and set out in complainant's Exhibit "A," including the drawing of all papers, deeds and execution and recording of the same, except taxes, provided the said defendants, Beverley and Talty, would sell and convey to the said complainant, Tribby, their equity in the aforesaid real estate and property for the sum of Three hundred (\$300.00) dollars; that these defendants accepted said offer made by the said complainant and believing said complainant intended to carry out his said verbal agreement, accepted from the said complainant the sum of \$50.00 as a

deposit; that at the time the said payment was made the complainant requested these defendants to defer signing deed until some future day. That subsequently other sums one of \$50.00 and one of \$20.00, were paid to these defendants by the said complainant and still believing as aforesaid they accepted same and at the time payments were made these defendants were informed by said complainant that said deed was not ready to be signed; that thereafter, to wit, October 13, 1904, when the said defendants again called at the office of the said complainant to receive the balance due them and to sign said deed the said complainant tendered to them the sum of only \$80.00, representing to them at the time that the said sum of \$80.00 was the correct balance due to these defendants, to this these defendants protested and refused to accept the said amount so tendered. After the refusal of these defendants to accept the said sum tendered by the complainant, the said complainant tendered them another and larger sum, said sum being \$110.19, which these defendants also refused to accept for the reason that each of said amounts so tendered by the complainant were less than the amount the said complainant agreed to pay and less than these defendants agreed to accept for said real estate and property. These defendants tendered themselves and were always ready and willing to perform their part of the said verbal agreement, but the said complainant persistently refused and failed to carry out his part of the said verbal agreement; that the said defendants continued to tender themselves ready and willing to carry out their part of said verbal agreement, until the 22nd. day of October, A. D. 1904, when these defendants being convinced that said complainant did not intend to carry out his said verbal agreement, served the following notice on the said complainant:

20

OCTOBER 21ST, 1904.

Mr. Charles E. Tribby, City.

DEAR SIR: As you have refused and still refuse to pay the amount you agreed to pay for my equity in lot 115 sq. 1242, I hereby notify you that all negotiations are at an end and I therefore tender to you herewith the sum made by you as a deposit.

(Signed)

"

A. L. BEVERLEY.

ELIZABETH L. TALTY.

That at the time said notice was served these defendants, through their attorney, made a tender of \$120.00 in cash; that said sum was refused.

That after said notice was served on said complainant, Tribby, and all negotiations between these said defendants and said complainant and before this suit was brought these defendants placed said property and real estate with their real estate agents who found an immediate purchaser for said property; that thereafter to wit, October 26th. 1904, these defendants executed and delivered a deed in fee simple to the said defendant, Charles F. Johnson; that these defendants have never met the said defendant Johnson and that said transfer and sale of said property and all negotiations concern-

ing same were made through the said real estate agents, and there was no collusion or combination between these defendants and the said Johnson to defraud said complainant.

21 6. These defendants deny the allegations of paragraph 6 of the bill of complaint, except so much as is admitted in paragraph 5 of this answer.

7. These defendants deny the allegations in paragraph 7 of the Bill of Complaint, except in so far as they may be admitted in paragraph 5 of this answer, and except the allegations as to the conveyance of the aforesaid real estate to the defendant Johnson.

8. Answering paragraph 8 of the Bill of Complaint these defendants deny that they conspired, confederated or combined to defraud the complainant and further answering this paragraph say :

'That the conveyance to the defendant Charles F. Johnson was a *bona fide* conveyance made by these defendants to the said defendant Johnson, through their real estate agents; that said sale and conveyance was made for a valuable consideration, there being paid on account of said sale through the said real estate agents to these defendants for said property the sum of \$50.00 on the 26th. day of October.1904, and on 28th. day of October, 1904, an additional sum of \$70.00. That said agents stand ready and willing to pay the balance upon the termination of this suit.

9. Answering paragraph 9 of the Bill these defendants deny that said complainant has ever been or is now willing to perform his part of said agreement, and further answering, these defendants say that in view of all the facts and in view of said complainant's, Tribby, repeated and persistent refusal to keep and perform his part of the agreement the said complainant is not entitled to
22 the relief prayed for, and they claim the same benefit of this objection as if raised by demurrer or plea.

And having fully answered they pray to be dismissed with their costs.

ANNIE LEE BEVERLEY.
ELIZABETH LAWRENCE TALTY.

WALTER C. BALDERSTON,
Solicitor for Defendants.

We do solemnly swear that we have read the foregoing answer by us subscribed and know the contents thereof, that the facts therein stated as of our personal knowledge are true, and those therein stated on information and belief, we believe to be true.

ANNIE LEE BEVERLEY.
ELIZABETH LAWRENCE TALTY.

Subscribed and sworn to before me this 18th day of November, A. D. 1904.

[NOTARIAL SEAL.] JOHN E. TAYLOR,
Notary Public, District of Columbia.

23 The complainant hereby joins issue with the defendants.
CHARLES E. TRIBBY, *Complainant.*

24 Whereupon, CHARLES E. TRIBBY, the complainant herein and a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

25 Direct examination.

By Mr. BROWN:

1 Q. Mr. Tribby, this is the case of Charles E. Tribby *versus* Annie Lee Beverley, Elizabeth Lawrence Talty, and Charles F. Johnson. Are you the complainant in this case? A. I am.

2 Q. You signed this original bill of complaint? A. I did.

3 Q. I will ask you whether you know Mrs. Annie Lee Beverley? A. I do, that is Mrs. Beverley (indicating).

4 —. Do you know Elizabeth Lawrence Talty? A. I do.

5 Q. Is she present? A. I do not see her.

6 Q. Do you know Mr. Charles F. Johnson, the other defendant? A. Well, I met him once.

7 Q. Is he present? A. No.

8 Q. Now Mr. Tribby, it is alleged in the pleadings in this case filed by the complainant, and admitted by the defendants, Beverley and Talty, in their answers that on or about the 6th day of October, 1904, you entered into an agreement with the defendants Beverley and Talty in relation to the sale by them to you of lot 115 in Clarence F. Norment's subdivision of square 1242 in the City of Washington, District of Columbia, the only point of difference between you and the defendants being as to the question of the consideration for the sale of this property. Now, will you kindly explain what that consideration was to be? A. The consideration was fifty three hundred dollars.

9 Q. Did Mrs. Beverley and Mrs. Talty agree to convey the property to you in fee simple in consideration of the sum of \$5300? A. That was the consideration.

Mr. BALDERSTON: Question and answer objected to.

Mr. BROWN: What is the ground of your objection, Mr. Balderston? (To the examiner:) Read the question.

Whereupon the question was read.

Mr. BALDERSTON: The answer is objected to as well.

10 Q. I will ask you to state, Mr. Tribby, whether at the time you entered into this agreement with Mrs. Beverley, and Mrs. Talty was there, you paid them a deposit? A. I paid a deposit at that time of fifty dollars.

Mr. BALDERSTON: I ask that the question and answer be stricken out as the question is leading.

11 Q. Did you take a receipt for this money?

Mr. BALDERSTON: The question is objected to.

Mr. BROWN: I will withdraw that question.

12 Q. Mr. Tribby, state whether or not you took a receipt for this money from Mrs. Beverley and Mrs. Talty? A. I did.

27 —. Mr. Tribby, examine this paper, which I will ask the examiner to mark "Exhibit No. 1" and copy into the record, and state whether you have ever seen that paper before, and if so what it is?

NOTE.—The paper referred to marked as above requested is filed herewith by the examiner.

A. That is the receipt given by Mrs. Beverley and Mrs. Talty for the deposit of fifty dollars made on this property October 6th.

13 Q. Was or was not this receipt signed in your presence? A. It was signed in my presence.

14 Q. State whose signatures are signed to that receipt? A. Annie Lee Beverley and Elizabeth L. Talty.

15 Q. Are these the identical parties who are named as defendants in this bill of complaint? A. They are the same.

16 Q. Now examine this piece of paper, which I will ask the examiner to mark "Exhibit No. 2" and copy into the record, and state whether you have ever seen that piece of paper before?

NOTE.—The paper referred to is marked as above requested and filed herewith by the defendant.

A. This paper was brought to my office by Mrs. Talty. It is an order for fifty dollars to be applied on account.

17 Q. Are you familiar with Mrs. Beverley's signature? A. I am.

28 18 Q. Is that her signature to that paper? A. That is her signature.

19 Q. Now who presented this order to you? A. Mrs. Talty.

20 Q. Do you know when it was presented? A. October the 10th.

21 Q. What did you do, if anything, when this order was presented? A. I paid Mrs. Talty fifty dollars.

22 Q. Did or did you not take any receipt from Mrs. Talty for the money? A. No, I simply took this order and pinned it to the receipt and I had Mrs. Talty write on this paper "Received October 10th" and Mrs. Talty signed it.

23 Q. Was that signed by Mrs. Talty? A. It was signed by Mrs. Talty in my presence.

24 Q. The defendant in this action? A. Yes.

25 —. Now how much did you pay Mrs. Talty at the time she signed it? A. What on, the last one?

26 Q. This one you have just testified about? A. Paid her fifty dollars.

27 Q. Examine this smaller paper which I will ask the examiner to mark "Exhibit No. 3" and copy into the record, and state whether or not you have ever seen that paper?

NOTE.—The paper referred to marked as requested and is filed herewith by the examiner.

29 A. That was brought down by the same party.

28 Q. Who do you mean? A. Why, Mrs. Talty.

29 Q. The defendant in this case? A. Yes sir.

30 Q. State what you did when Mrs. Talty presented this to you?
A. This is a similar order for twenty dollars.

(Reading :) "Please give my daughter Mrs. Talty \$20. A. L. Beverley."

31 Q. State what you did? A. I gave Mrs. Talty twenty dollars.

32 Q. Now, going back to this original receipt, the one that was first offered in evidence, marked Exhibit 1, I will ask you to state whether any addition has been made to this receipt since it was signed and if so, what addition? A. I put the amount of the consideration in the receipt, \$5300.

33 Q. When was that put in there? A. On the same day I took the receipt.

34 Q. But that was put in after the receipt was signed? A. I think it was.

Mrs. ANNIE LEE BEVERLEY, a defendant: Before the receipt was signed.

Mr. BOYD: I want that remark to appear in the record.

30 Mr. BALDERSTON: I object to that. Mrs. Beverley has not been sworn—is not under oath, and is not a witness.

35 Q. Mrs. Tribby, you have stated that it was your impression that that was put into the receipt after it was signed? A. I am not quite sure about that. I don't know whether it was put in at the time——

Mr. BALDERSTON: I ask that the question and answer be stricken out.

(The WITNESS, continuing :) The receipt was drawn by Mr. Brown and was handed to me and I don't know whether I put in the \$5300 before or after Mrs. Beverley signed it but the \$5300 was in my handwriting.

36 Q. The balance of the receipt is in whose handwriting? A. In your handwriting (indicating Mr. Brown).

37 Q. Now, Mr. Tribby, there seems to be some confusion in the record, the questions that I have asked have not been answered fully, and I will ask you again whether or not you are certain that this \$5300 was inserted before or after the receipt was signed?

Mr. BALDERSTON: I object to the question.

A. I am not quite sure; it was done in the presence of Mrs. Talty and Beverley and I could not say whether the \$5300 was put in there before or after they signed it.

Mr. BROWN: I now offer these exhibits, 1, 2, and 3 in evidence.

COPY OF EXHIBIT No. 1.

"WASHINGTON, D. C., Oct. 6, 1904 190—,

31 Received of Chas. E. Tribby Fifty Dollars in part payment for Lot # 115 Sq. 1242 to be conveyed to him by us in fee \$5300 simple on Oct. 8-'04.

\$50.00

ANNIE LEE BEVERLEY.
ELIZABETH L. TALTY."

COPY OF EXHIBIT No. 2.

Mr. TRIBBIE: Please give my daughter Mrs. Talty \$50—
A. L. BEVERLEY.

Received Above Oct 10-'4
E. L. TALTY."

COPY OF EXHIBIT No. 3.

Please give my daughter Mrs Talty \$20 00 / 100
A. L. BEVERLEY.

Oct 7th—"

38 Q. Now, Mr. Tribby, getting back to the time when you and Mrs. Beverley and Mrs. Talty were talking over the matter of selling this property, state how this consideration of \$5300 was to be paid; that is to say what comprised the \$5300 that you agreed to pay for the property?

Mr. BALDERSTON: I object to the question if there is any writing to show what the contract was.

A. There was a trust of \$4750 on the property and there was a balance on a second trust due Attwell & Treadwell—one hundred and some odd dollars, I don't know just what it was, and the taxes were to be paid, and the expenses against the property were to be paid out of that amount, \$5300, and the balance was to be given to Mrs. Talty and Beverley.

32 39 Q. Now Mr. Tribby, I don't quite understand your answer. In the first place, you say there was a first trust on this property; was or was not that trust to be assumed by you as part of the purchase price? A. Oh, yes, I was to assume both the first and second trusts.

40 Q. Well, was or was it not a fact that at that time you had already lifted the second trust with Attwell & Treadwell and made Mrs. Beverley and Mrs. Talty a loan secured by a second trust on this property? A. Yes, at that time there had been a loan of \$306.05 that I had made to Mrs. Beverley and settled the trust of Attwell & Treadwell and also some interest she owed at the bank; at any rate the loan of \$306.05—the second trust.

41 Q. Was that second trust to be deducted from this purchase price of \$5300? A. Oh, yes.

42 Q. Was there anything else to be deducted from the purchase price of \$5300? A. Well, I was to assume the first trust—

43 Q. Well, you have already testified as to that.

The WITNESS (continuing)—to pay the taxes.

44 Q. Who was to pay the taxes? A. I was to pay the taxes. That was to be deducted.

45 Q. To be deducted from what? A. From the amount agreed upon, \$5300.

33 46 Q. Was there anything else to be deducted? A. Well, I had made a deposit of \$120—let's see, that is hardly a question I want to answer—let's see—anything else to be deducted

at the time—what was to be deducted at that time—what was to be deducted at that time I can't just——

47 Q. Mr. Tribby, the bill in answer—the pleadings in this case show that you were to assume the first and second trusts which amount to \$5056.05, and that you were to pay the balance, the difference between this amount and \$5300 to Mrs. Beverley and Mrs. Talty in cash, the taxes, interest and so on to be adjusted and deducted from the amount coming to them.

Mr. BALDERSTON: I object to the form of the question.

Mr. BROWN: I will amend the question and say the pleadings show—leave out the answer.

Mr. BALDERSTON: I object to the form of the question again.

Mr. BROWN: Read the amended question.

Amended question read.

48 Q. Is that the substance of your testimony as I understand it?
A. That is correct.

49 Q. Now Mr. Tribby, after you had entered into this agreement, what, if anything, did you do towards consummating the deal? A. What took place after we had decided on the consideration?

50 Q. Yes sir. A. I paid as I stated before a deposit of
34 \$50 at the time that the price was agreed upon, and subsequently I made two more payments of \$50 and \$20.

51 Q. Well, what else did you do towards bringing—— A. I prepared or had prepared a deed and wrote one or more letters to Mrs. Beverley and Talty to call and execute it.

52 Q. Did you take any steps to ascertain the amount of taxes due on the property? A. Ordered a tax certificate.

53 Q. Did you receive a tax certificate? A. Received a tax certificate.

54 Q. And deducted the taxes from the amount of the consideration? A. I believe the taxes amounted to thirteen dollars and something——

Mr. BALDERSTON: I object, Mr. Examiner, to the witness testifying from the paper which he holds in his hand.

55 Q. Examine Exhibit 4, which I will ask the examiner to copy into the record, and state whether or not that is the certificate you received from the Collector of Taxes in reference to this property?
A. Yes sir.

Mr. BROWN: I offer that in evidence.

35 GB *General Taxes.*

For year ending June 30 1904 \$13.10

36 56 Q. Now, examine this tax bill, which I will ask the examiner to copy into the record and mark "Exhibit No. 5," and state where you received that bill—from whom you received it?

NOTE.—The paper referred to is filed herewith by the examiner and marked as requested.

A. I don't know whether I received this from the tax office or Mrs. Beverley.

Mr. BROWN: All right, I won't offer that at the present time.

57 Q. Now Mr. Tribby, after you had made this agreement with Mrs. Beverley, and after you had paid the various sums you have testified to on account of said contract, and after you had received the tax certificate that is offered in evidence, what other steps did you take towards consummating the sale?

Mr. BALDERSTON: I object to the question as leading.

Mr. BROWN: I will amend the question, Mr. Examiner, and say what, if any, further steps did you take?

A. I requested Mrs. Beverley and Talty to call at the office and execute the deed. In the meantime I had had it prepared for them, then I wrote them later to that effect.

58 Q. Well, did or did not Mrs. Beverley and Mrs. Talty call?

A. They called, and when I figured out the amount of actual cash that was due Mrs. Beverley and Mrs. Talty, she objected.

59 Q. Who objected, Mr. Tribby? A. Mrs. Beverley objected; Mrs. Talty was very well satisfied. At the time——

37 Mr. BROWN: That will do.

60 Q. Mr. Tribby, the pleadings show that the defendants Beverley and Talty called at your office on October 13, 1904; please state whether or not on that date you tendered them a deed for their signatures conveying the property in controversy to you in fee simple? A. I did.

61 Q. Examine Exhibit B attached to the original bill of complaint in this case and state whether or not this is the deed that you tendered to Mrs. Beverley and Mrs. Talty for their signatures? (Handing witness original bill.) A. This is the deed.

62 Q. Did you or did you not at the time you tendered this deed, that is, on October 13, 1904, tender to Mrs. Beverley and Mrs. Talty the sum of \$110.19? A. I did.

63 Q. State whether or not they accepted this tender? A. They did not.

64 Q. Did they give any reasons for refusing to accept the tender? A. They said they would have to have more money to settle some bills they had, and unless they could get the additional amount they preferred not to sell.

65 Q. Now, at the time you made them this tender state how you arrived at the amount of money you thought was due them under this contract? A. Well, I deducted the first trust——

38 66 Q. What was the amount of that? A. Forty-seven hundred and fifty.

67 Q. Fifty what? A. Forty-seven hundred and fifty.

68 Q. Forty-seven hundred and fifty what? A. Forty-seven hundred and fifty dollars, that is what it was, forty-seven hundred and fifty dollars, and the taxes was \$13.10 I think, and the second

trust was \$306.05. I don't think there was anything else deducted at that time.

69 Q. Was or was not the hundred and twenty dollars that you already advanced? A. The deposit, of course.

70 Q. Was that deducted? A. That was deducted of course.

71 Q. And so this amount subtracted from \$5300 left the amount that you tendered? A. I think it did. I figured it out at the time but I have not since.

72 Q. Are you quite certain as to all these amounts or is it merely your best recollection? A. Well, to my best recollection it is correct; I am certain as to the amounts of trusts, but I have not figured it out recently, but if it is important—necessary—I can run it over in a minute and convince myself.

Mr. BALDERSTON: I objected to the witness reading from the paper which he has in his hand.

73 Q. At the time you tendered the defendants, Beverly and Talty' this—I will withdraw that question, Mr. Examiner, for a moment.

74 Q. Referring to your testimony as to the taxes in this case, are you speaking from your best recollection in the matter or are you positive that was the amount of the taxes? A. I am positive that was the amount, I have the certificate.

Mr. BALDERSTON: The question is objected to because it is evident that the witness has used the paper which he still holds in his hand and which I have on several occasions objected to and he is evidently not testifying from his own recollection nor from any document which would be the best evidence in the case.

75 Q. Now, at the time you tendered this money to the defendants, Beverley and Talty, did they or either of them make any objections to the deed that was offered for their signatures? A. No, there was no objection to the deed in any way, in fact they did not look at it.

76 Q. Did you or did you not have a notary public ready to take their acknowledgment if they signed the deed? A. I did.

77 Q. During the negotiations relative to this property, was there any correspondence passed between you and the defendants, Beverley and Talty? A. Yes, there were several—

Mr. BALDERSTON: I object to the question as leading.

A. (Continuing)—letters and telephone messages and so on.

78 Q. Examine Exhibit 6, which I will ask the examiner to copy into the record, and state whether you have ever seen that before and if so how it came into your possession?

40 NOTE.—The paper referred to is filed herewith by the examiner and marked as requested.

A. This came through the mails from Mrs. Beverley.

79 Q. Can you or can you not recognize Mrs. Beverley's writing? A. I can.

Mr. BALDERSTON: I object to the answer as the witness is incompetent to testify to the handwriting.

80 Q. Are you familiar with the defendant's, Beverley's handwriting? A. I am.

81 Q. State whether or not you answered this postal card? A. Yes, there was a reply to it.

COPY OF EXHIBIT No. 6.

Postal Card.

Mr. Tribby, Nat. Loan Association Office, 15th & G Sts. N. W., Home Life Bldg., Washington, D. C.

110 E St. N. W., Oct. 11th, '04.

Mr. Tribby.

DEAR SIR: In transferring the rents to you I should have mentioned that any rents that may be collected prior to signing the deed should come to me that was the proposal Mr. Simpson had made to me does this satisfy you? It will help me pay the
41 taxes & a young attorney told me this was usual—Hastily—
A. L. B."

There may be no rents due before the property is yours. I can find out."

Mr. BROWN (to solicitor for defendants:): Mr. Balderston, we have a copy of the letters that the witness sent to Mrs. Beverley—I presume she received it—and we will offer this in evidence unless you object. Of course we have not notified you.

Mr. BALDERSTON: Yes, I will have to object.

Mr. BOYD: I request you to examine the copy before objecting to its introduction. You may be willing to admit that you received the original letter of which this is a copy.

Mr. BALDERSTON: I think I will have to object to it, Mr. Brown.

Mr. BROWN: It seems to me, Mr. Balderston, we will have to call for the original.

Mr. BALDERSTON: You can put it in subject to my objection. I don't see any reason why you can't put it in subject to my objection I don't want to waive any rights I may have.

Mr. BOYD: We will put that in the record and call on the defendant to produce the original at the next session of the complainant's testimony.

82 Q. Mr. Tribby, examine Exhibit 7, which I will ask the examiner to copy into the record, and state whether or not this is a copy of the letter you sent to Mrs. Beverley in reply to the postal card already offered in evidence marked Exhibit 6? A. Yes, this
is a copy of the letter.

42 83 Q. Did you deposit it in the mail? A. I did.

84 Q. That is the original I mean. I offer that in evidence.

NOTE.—The paper referred to is filed herewith by the examiner and marked as requested, Complainant's Exhibit No. 7.

COPY OF EXHIBIT No. 7.

"The National Loan & Investment Co. Home Life Bldg., Cor. 15th
& G Sts., N. W.

WASHINGTON, D. C., Oct. 12, 1904.

Mrs. Annie L. Beverly, 710 E. St., N. W.,

DEAR MADAM: Your postal to hand. You are aware no doubt that the rent of premises 8036 O St., is payable in advance and all rent due the coming 15th is for the month following when the property will have been transferred.

No doubt you were under the impression rents were collected to date and in that event you would most assuredly be entitled to same until the actual transfer of title. You and Mrs. Talty may call at any time and execute the deed.

Very truly yours,
(Signed)

NATIONAL LOAN & INVEST-
MENT CO.,
Per CHARLES E. TRIBBY, *Manager.*"

85 Q. Examine Exhibit 8 which I will ask the examiner to copy
in the record and state whether or not you have ever seen
43 that paper before? A. I received this.

86 Q. How did you receive it? A. Received it through
the mails.

87 Q. Can you recognize the signatures attached to the letters?
A. I can recognize both.

88 Q. Whose signatures are they? A. Annie Lee Beverley and
Elizabeth Lawrence Talty.

89 Q. The defendants in this case? A. The defendants in this
case.

90 Q. State whether or not you replied to that letter? A. I did.

91 Q. Examine Exhibit 9, which I will ask the examiner to copy
in the record, and state whether that is a copy of a letter you ad-
dressed to Mrs. Beverley in reply to her letter, Exhibit 8? A. This
is a copy.

Mr. BROWN: We will ask that the defendants produce the original
letter at the next hearing of complainant's testimony.

92 Q. Did you or did you not put the original letter in the mails
addressed to Mrs. Beverley? A. I did.

93 Q. Was it duly stamped? A. It was duly stamped.

Mr. BROWN: I think I have offered all these exhibits in evidence,
if not, I do it now.

NOTE.—The last two papers referred to are filed herewith by the
examiner marked Complainant's Exhibits Nos. 8 and 9.

44 COPIES OF EXHIBITS NOS. 8 AND 9.

"WASHINGTON, D. C., October 21st, 1904.

Mr. Charles E. Tribby, City.

DEAR SIR: As you have refused and still refuse to pay the
amount you agreed to pay for my equity in Lot 115 Sq. 1242, I.

hereby notify you that all negotiations are at an end, and I therefore, tender to you herewith the deposit made by you.

Yours truly, ANNIE LEE BEVERLEY.
ELIZABETH LAWRENCE TALTY."

"The National Loan & Investment Co., Home Life Bldg., Cor. 15th & G Sts. N. W.

WASHINGTON, D. C., Oct. 24, 1904.

Mrs. Annie L. Beverley, 12th & K Sts. N. W.

DEAR MADAM: Yours of the 21st received. While I am not desirous of being arbitrary or to go into litigation to have our differences settled, I must insist that circumstances will not permit me giving up the property. According to yours as well as your daughter's statements, this property was for sale sometime and you had received several offers. We talked the matter over and I made you an offer in the presence of your daughter who advised you to sell, and after a day's consideration you both concluded to take \$5300., that being equal to the highest offer made by anyone else. I made a deposit of \$50.00 and have a receipt over yours and your daughter's signature- for same, and stating the amount agreed upon, and at your request have since made two additional payments of \$50.00 and \$20.00. Since making the last payment, I was informed by one of the tenants that he held a receipt for rent for one month ending November 15th. As the day of transfer was to be October 12th I naturally considered this month's rent would come to me, but as you were disinclined to allow it and in order to settle amicably, I let the matter drop and with the allowance of \$26.50 which is rightfully mine, you still seem disinclined to settle. I have the second trust recorded, the deed drawn, have seen and arrange- with tenants, and am having some work done to the property. You see, therefore, it is utterly impracticable to drop the matter and to accept the amount you offer, which is the amount actually paid you as a deposit. It is proper to remind you that tax, water rent, and general expenses are charged to you until an actual transfer is made, and I would advise that the sooner this transfer is made the better it will be for you.

Very truly,

(Signed)

CHARLES E. TRIBBY.

(Copy)"

Mr. BALDERSTON: I object to the copies going in evidence on the ground that they are not originals.

Mr. BOYD: The complainant gives notice to the defendant to produce the originals of all these copies at the next session.

94 Q. You have testified, Mr. Tribby, that you have met the defendant Johnson once. Will you state under what circumstances you met the defendant Johnson and fix the date if possible?

46 A. As near as I can recall it was the last Sunday in October. I saw by the record that the property 3036 O Street was transferred to Mr. Johnson.

95 Q. What record, please? A. The court record. Charles F. Johnson, I think. Looking in the directory I found he was the only one of that name in the District, so I called on Mr. Johnson and asked him about this property, 3036 O Street.

96 Q. I will ask you, Mr. Tribby, to state exactly what transpired when you called on Mr. Johnson? A. I asked him if he knew anything about this property 3036 O street, and he told me he did not. I said I see the property has been transferred to you. He said Yes, I saw that in the court record and I don't know anybody else by the same name——

Mr. BALDERSTON: I object to what the witness told Mr. Johnston—what Mr. Johnson told the witness on the ground that it is not admissible when Mr. Johnson is absent.

Mr. BOYD: Mr. Johnson is one of the defendants in the case and he was the one who made the statement to the complainant in the case and if counsel for Mr. Johnson means to say that it is inadmissible because he is not present at this hearing we submit that he is present by counsel and as the record discloses, he had due notice of this session and it is his own fault if he is not personally present.

Mr. BROWN: You may continue, Mr. Tribby.

The WITNESS: I further questioned him about the purchase of this property and he said that he had purchased no property—he didn't know anything about this property. He also said that he saw in the record that there was property transferred to
47 Charles F. Johnson and he was wondering who it could be.

97 Q. Was anyone present at the time you had this interview? A. You were present at the time (Indicating Mr. Brown), and I think at that point you took the matter up and began to talk to him.

98 Q. You mean by saying "You" were present, you mean O. P. M. Brown, the one who is examining you at the present time? A. Yes, sir, O. P. M. Brown.

99 Q. Now Mr. Tribby, did you or did you not subsequent to this conversation with Mr. Johnson, have any conversation with either of the defendants, Talty and Beverley? Wait a moment while I go back. I will ask that the examiner omit that question temporarily.

100 Q. At the time you had this interview with Mr. Johnson, can you recall any conversation that Mr. Brown had with Mr. Johnson in your presence?

Mr. BALDERSTON: Oh, I object to that.

A. You asked him at that point as well as I can recall, if he ever had any business relations with Willige, Gibbs & Daniel, that you understood the property was sold through them?

101 Q. What was his reply? A. His answer to that was that sometime ago he was in their employ but he had been away on sick leave for several months and you asked him could any property have been bought for him through them. He said that a grand-

father of his had some money left there for investment and he was to be one of the trustees.

102 Q. Did he tell who the other trustee was? A. I do not remember that he told who the other trustee was. You asked him if it would have been likely that a piece of property had been bought without his knowledge and consent. He said he thought not, that no property had been bought for him; he would have been apprised of it before——

103 Q. When you say "for him" do you mean for him as trustee? A. For him as trustee for his grandfather's estate.

104 Q. Now, you have stated that this conversation you had with Charles F. Johnson, the defendant in this case, was on the last Sunday in October; I will ask you to state whether it was before or subsequent to the time that you saw the notice of the recording of a deed from Mrs. Beverley and Mrs. Talty to this property to Charles F. Johnson? A. Subsequent of course. I saw it in Saturday morning's record and the following Sunday I called on Mr. Johnson.

105 Q. Now, state whether or not subsequent to this conversation with Mr. Johnson you had any conversation with either of the defendants, Talty or Beverley and if so, on what date? A. I had a conversation the following day, being Monday, with Mrs. Talty.

106 Q. State how that occurred? A. Toward the evening I called Mrs. Talty up and told her I would like to have a talk with her and asked her if she could not come down to the office at once—once or twice—I wanted to see her, and she said she would. I also spoke of the strange way she and her mother acted in regard to this property and why in the world she transferred this property to Mr. Johnson after selling it to me—after accepting three payments. She said that was her mother's doing and not hers. She had to so as her mother said. I said all parties interested in this matter understood and knew that I had bought this property and had made several payments on it and I mentioned one to be Mr. Daniel in particular who had talked with me over the phone. I said you are aware that Mr. Daniel knew all about this transaction and she answered and said of course Mr. Daniel knew all about it. I said could you be down in half an hour. She said yes, be right down.

107 Q. Are you familiar with Mrs. Talty's voice? A. Oh, yes, I have talked with her a number of times.

Mr. BALDERSTON: I object to the question and the answer by the witness as the witness has not shown he is a competent witness to testify as to the voice of Mrs. Talty.

108 Q. Did you or did you not recognize the person speaking to you as being Mrs. Talty? A. I recognized her voice instantly.

109 Q. Mr. Tribby, have you or have you not been willing at all times to fulfil your contract as set forth in the pleadings in this case? A. I have.

110 Q. Are you or are you not at the present time willing to fulfil your contract as set forth in the bill in this case? A. I am willing at any time to carry out the original contract.

111 Q. Are you able to carry out the provisions of this
50 contract? A. I am able to carry them out at any time.

112 Q. Have you or have you not ever consented to release Mrs. Beverly and Mrs. Talty from their obligations under their contract as set forth in this bill? A. I have never had any conversation with them in regard to releasing them.

113 Q. Just answer the question, Mr. Tribby? A. I have not.

Mr. BALDERSTON: I object to the question of Mr. Brown's "Just answer the question" and I object to the answer.

114 Q. Have you ever given your consent to the defendants Beverly and Talty that they should convey this property to someone else? A. Certainly not.

Mr. BROWN: Cross-examine.

Cross-examination.

By Mr. BALDERSTON:

115 Q. In your direct examination, Mr. Tribby, you stated that you had a second deed of trust on this property Lot 115, Square 1242, I ask you to repeat what the amount was of the second trust? A. \$306.05.

116 Q. Now I will ask you how you happened to have that second deed of trust, whether or not you paid Mrs. Beverly or Mrs. Talty, either or both, a sum of money for which you were given a deed of trust on the property?

Mr. BOYD: We object to the question because the answer admits the existence of the trust and it is not in controversy at all.

51 A. I don't think Mrs. Beverly or Talty received any actual cash. They brought a statement at the time of the indebtedness of this property, interest and so on, and creditors——
— Now, they brought you a list you say? A. Yes.

117 Q. That showed the amount of money they wanted? A. Yes.

118 Q. Now, I will ask you whether or not you loaned them that amount?

Mr. BOYD: We object on the same grounds.

A. That was the amount I loaned, \$306.05.

119 Q. Exactly what it took to settle with their creditors? A. Exactly what it took to settle with their creditors. And there was a second deed of trust I settled.

120 Q. Can you give me what that list was? A. I do not recollect all the items.

121 Q. Was there anything mentioned in that list to you at that time? A. Yes, I think there was, one with Mrs. Talty and the other with Mrs. Beverly.

122 Q. Now, I will ask you what the amounts were? A. Well, without a memorandum I cannot remember the amount of it. If you would like to know the amounts I will have to refer to the memorandum.

Mr. BOYD: We object on the same grounds.

123 Q. Have you memoranda with you? A. Yes, would you like to have it?

124 Q. Yes, for the purpose of refreshing your recollection.

(Witness refers to paper.)

52 A. Mrs. Beverley had an account of \$28.45 and Mrs. Talty \$36.60.

125 Q. That made even \$65.05 they owed you. Now, Mr. Tribby, aside from that \$65.05 which they owed you, how much did you pay other parties for Mrs. Talty and Mrs. Beverley? A. On the second trust Attwell & Treadwell \$132.62.

126 Q. Now, one thirty two you said to Attwell & Treadwell? A. \$132.62.

127 Q. One hundred and thirty two dollars and sixty-two cents and sixty-five dollars and five cents is what they owed you; that makes \$195.67. Now, will you state what was done with the balance? A. Well there was \$106.88 due the Central National Bank as interest; 50 cents for notary fee in addition to that.

128 Q. That makes \$302.05, Mr. Tribby, can you tell me what was done with the balance? A. I don't know of any balance.

129 Q. Then I will ask you what the \$36.60 which you say that Mrs. Talty owed you, what was that for? A. Borrowed money.

130 Q. I will ask you what the \$28.45 was for that Mrs. Beverley owed you? A. Borrowed money.

131 Q. Now, they owed you these respective amounts; did they apply to you for this loan, is that the idea? A. Yes.

53 132 Q. It was not for making this new loan? A. For making the new loan—the second trust you mean?

133 Q. Yes, that was a loan, wasn't it? A. Yes.

134 Q. What was that amount? A. \$306.05.

135 Q. \$306.05?

Mr. BOYD: Please note an objection here to this entire line of cross-examination because it is not responsive to anything in the direct examination, and furthermore the defendants in their answers admit the consideration of \$306. which they are now attempting by this improper line of cross-examination to inquire into.

136 Q. Now, Mr. Tribby, I again ask you whether this \$28.45 which Mrs. Beverley owed you, and the \$36.60 which you said Mrs. Talty owed you, was that before this loan of \$306 was made? A. Oh yes.

136 Q. Before; had no connection with the \$306? A. No, she owed that a long while; both of them.

138 Q. All right. Then, Mr. Tribby, I will ask you what you were paid for lending this \$306.05 to Mrs. Beverley and Mrs. Talty?

Mr. BOYD: Same objection as before.

A. Well, she gave eight notes of \$45.60, monthly notes. \$306.05 was the amount in actual cash that I turned over.

139 Q. Then in payment for the loan of \$306.05 you were to re-

ceive the sum of \$364.80, were you? Now, what was that exorbitant charge for, Mr. Tribby? A. Well, charged as commissions for drawing up the trust.

54 140 Q. How much was that? A. Drawing up the trust?

141 Q. Yes. A. Well, we figured that our services in that connection of drawing up the second trust and releasing the second trust from Attwell and Treadwell, paying for the release, having it recorded and recording our release, was worth \$25.

142 Q. Then that still makes a difference of about \$35; what was that for? A. We charged that as commissions and interest.

143 Q. Commissions and interest for what? A. For the loan of \$306.05.

144 Q. How much interest do you charge, Mr. Tribby?

Mr. BOYD: Mr. Examiner, kindly note on the record that we object to this entire line of testimony.

Mr. BALDERSTON: I will withdraw the question.

145 Q. Now, Mr. Tribby, after this loan was made by you of \$306.05, you then verbally agreed with Mrs. Beverley and Talty to purchase this property, did you? A. I did.

146 Q. Have you any writing—any agreement in writing? A. At that time there was no writing took place. Mrs. Beverley, as she stated, had had the property for sale for some months, and she spoke of the offers she had for the property, that several parties had offered her fifty-three hundred dollars. I told her I thought the property was reasonable at that price—I was not looking for property but would be willing to give her that amount myself; if she would agree to sell at that figure I would cancel all commissions and interest on the second trust.

55 147 Q. This conversation all took place subsequent to the time the second trust loan was made, amounting to \$306.05? A. I can hardly say it was subsequent to the trust, because Mrs. Beverley and Talty was there to settle when this conversation took place.

148 Q. Did they sign the second deed of trust then and there? A. The deed of trust?

149 Q. Yes. A. We are talking about the second trust now.

150 Q. Well, that is a deed of trust, is it not? A. Signing the second deed of trust, yes.

151 Q. It was then that they verbally agreed to sell you this property? A. Yes, at that time. No, they did not decide fully at that date. When I made the offer of fifty-three hundred dollars, Mrs. Talty advised Mrs. Beverley to accept it, inasmuch as she had disposed of the rent of it a number of months ago and was receiving no revenue—the taxes and insurance were accumulating all the time—she had better decide to sell it at once, and the following day they called and agreed to sell.

152 Q. Well, you stated that at that time they did not agree to sell the property; state when they did agree to sell it? A. The following day.

153 Q. The following day? A. Yes.

56 154 Q. Was that in writing? A. They agreed to sell the property the following day, and I gave them a deposit of fifty dollars, and I stepped to the door of my office——

155 Q. Now, Mr. Tribby, what I asked you was this; if there was any agreement in writing? A. Well, I am going to tell you how we got the agreement in writing. I stepped to the door of my office and called Mr. Brown, and told him that Mrs. Beverley and Talty had decided to sell the property for fifty-three hundred dollars, and to write out a receipt for a deposit of one hundred dollars, which he did and brought the receipt in. Mrs. Beverley said she did not care for the hundred dollars, she was afraid she would spend it, but she would accept fifty; if she took the hundred she would be apt to spend it.

156 Q. Did you have the deed made out for that property at that time? A. Certainly not; they had just decided to sell.

157 Q. Did you have it made out at that time? A. No, it was made out several days after that.

158 Q. When you made the deed out, what did you do, Mr. Tribby; did you send for Mrs. Beverley and Mrs. Talty? A. Yes, I wrote them a letter and told them the deed was ready for them. Mrs. Talty came there to the office several times—said she had an appointment with her mother to sign the trust.

159 Q. Sign the trust? A. Sign the deed, I mean. I think Mrs. Talty was at the office three different times waiting for Mrs. Beverley to come and sign the deed.

160 Q. When Mrs. Beverley called; did she sign. A. No, she did not.

57 161 Q. Did Mrs. Talty sign? A. No.

162 Q. Why did they say they would not sign—why did they refuse to sign? A. They said they would have to have more money—the property was worth more than that, they could get more, and if they could not get the additional amount they preferred not to sell. They had been advised by an attorney that if they had not signed the deed it was not considered a sale.

163 Q. Can you place the date of this conversation? A. Well, no, I can't recollect the exact date when this conversation took place, but Mrs. Talty and Beverley were present—they recollect it.

164 Q. Didn't they say that the agreement was that they were to receive a larger amount of money than you offered? A. Yes, that was touched upon. Sometime prior to that Mrs. Beverley said that it would take about \$300 to settle all her indebtedness, and if she thought the property would net her that it would be enough to settle with everyone. I told her that it was impossible to say what amount she would receive; I would make her no charge for the papers and the recording and the tax certificate and so on, and I judged the amount would be in that neighborhood, between two and three hundred dollars, but I could not tell exactly what the first trust was. I found out afterwards it was fifty dollars more than she thought it was.

165 Q. Then, Mr. Tribby, you offered to buy this property from

58 Mrs. Beverley and Mrs. Talty before you knew the amount of the first trust? A. Well, I knew it within fifty dollars; it was either forty-seven hundred or forty-seven hundred and fifty and I was perfectly safe on the first trust.

166 Q. Mr. Tribby, you spoke a while ago of Mrs. Talty advising Mrs. Beverley to sell the property because the insurance was mounting up. Didn't you know as a matter of fact that the insurance was paid up to that time—was not running along? A. That was one of the expenses that was named at the time by me; I didn't know that.

167 Q. But as a matter of fact you knew that was paid, did you not? A. Well, I found out subsequently it was paid, but I did not know it at that time.

168 Q. Now, what do I understand was your answer a few moments ago, Mr. Tribby—you were to pay all the expenses incident to the transfer of this property, is that correct? A. Yes, I agreed to do that.

169 Q. And you were to pay all outstanding indebtedness except the taxes, is that correct? A. The taxes and the water rent, but the water rent I found was paid.

170 Q. Now, Mr. Tribby, when Mrs. Beverley and Talty called to see you, was not the reason given by them for not signing the deed that you did not keep your part of the contract? A. Well, there was no direct accusation of that kind.

171 Q. Was there an indirect one in that direction? A. I understood Mrs. Talty to say that one month's rent had been paid
59 in advance, which amounted to \$32.50. I thought that I was entitled to that—it was \$26.50 I should have said—but after figuring it out and finding the amount of Mrs. Beverley's indebtedness, I decided to take this amount off, which I thought I was rightfully entitled to—this \$25.50.

172 Q. You did not know that at first? A. I did not know that when I bought the property.

173 Q. You did not know that the day they made the deed of trust out—the second deed of trust? A. No, I did not.

174 Q. I hand you herewith Exhibit 8, Mr. Tribby. In your direct examination you stated you received that by mail; I want to know whether or not you are sure about that? A. To the best of my recollection; I don't know—I get a great deal of mail. I cannot be positive whether it came through the mail, but I think it did.

175 Q. If you will read that you will notice that they say there that they tender herewith the amount of the deposit made by you? A. Well, the situation is this: this letter was found on my desk—I found it on my desk when I came in there.

176 Q. Then you don't know whether you received it by mail or not? A. No, I don't open all the mail that comes in the office, and I could not say whether it came by mail or by bearer.

177 Q. If you had received that letter by mail, would you not have thought it very peculiar that the \$120 was not enclosed?

60 Mr. BROWN: We object to what the witness might have thought.

A. Well, that might be possible.

178 Q. Don't you know as a matter of fact, Mr. Tribby, that Mrs. Talty called at your office accompanied by me and tendered \$120 to your attorney, as you were absent, Mr. O. P. M. Brown? A. I don't know; I don't know anything about that; I was not there at the time.

179 Q. Never heard of it? A. I heard Mr. Brown talking about it.

180 Q. Heard him say so? A. Heard him say so, yes.

181 Q. Mr. Brown is connected with your office and business, is he not? A. He is.

182 Q. He is your attorney? A. He is.

183 Q. You know that that \$120 tendered was refused, do you not Mr. Tribby? A. Mr. Brown refused to accept it; he had no authority to accept it and he did not do it.

184 Q. You know that he refused it, do you not? A. I do.

185 Q. You never since have signified that you would accept it, have you? A. No.

186 Q. Now, Mr. Tribby, you said you paid the note that was due at the bank of \$106.88; have you the receipt. A. Yes, I think so.

61 187 Q. Will you produce the receipt? A. Yes, here is the receipt. (Witness produces paper.)

Mr. BOYD: Going to offer that in evidence, Mr. Balderson?

Mr. BALDERSTON: Just a moment, Mr. Boyd.

188 Q. When did you first discover, Mr. Tribby, that the deed of trust, instead of being as you first thought, forty-seven hundred dollars, was forty-seven hundred and fifty? A. Well, I turned the matter over to Mr. Brown; he does all that work, and he informed me of the fact.

189 Q. Well, how long after your agreement with Mrs. Beverley? A. Oh I don't know—a few days.

190 Q. Now the bill says this: "Heretofore, to wit, on the 6th day of October, A. D., 1904—"

Mr. BOYD: What paragraph?

Mr. BALDERSTON: The 5th paragraph. (Continuing) "—the defendants Beverley and Talty entered into and made an agreement with Charles E. Tribby, the complainant herein, by which each of them agreed to sell and convey to the complainant, on the 8th day of October, A. D., 1904, all their separate interests in and to the aforesaid real estate." Now that was the 6th day of October; is that correct?

A. To the best of my knowledge; I don't know.

191 Q. Well, this bill states October 6th, and when it was drawn, if there had been any mistake about it you would have known it? A. Yes.

192 Q. I show it to you to refresh your recollection, and ask you if it is a fact it was on the 6th day of October?

62 (Handing witness paper.)

A. It was on the 6th day of October.

193 Q. The 6th day of October is correct? A. Yes, sir.

194 Q. Then a few days after that you found that the deed of trust was \$4750; is that right? A. Yes.

195 Q. Who paid this note at the Central national bank, you or Mr. Brown? A. I could not say.

196 Q. When did you get the receipt; on the same day it was paid? A. Naturally.

197 Q. Well, then, if that be true, Mr. Tribby, how is it you didn't know it on that very day, when the receipt is dated October 6th?

Mr. BOYD: I object to any reference to the receipt until it is in evidence.

Mr. BALDERSTON: I offer the receipt in evidence, Mr. Examiner, and ask to have it numbered Defendant's Exhibit No. 1 and copied into the record.

NOTE.—The paper referred to is filed herewith by the examiner, marked as above requested.

COPY DEFENDANTS' EXHIBIT No. 1.

"Bring This Note with You.

Mr. H. Wardman.

Int. on Your Note for \$4750.

Int. \$106.88.

Due 10 Sept.

At the Central National Bank of Washington City,

Cor. 7th Street and Penna. Ave.

Checks Offered in Payment of Notes Must Be Certified.

63 *Endorsements on Exhibit 1 (Defendants').*

Central National Bank

Paid.

Oct. 6-1904.

Of Washington City.

Cr. Acc't.

Lot 115 Sq. 1242."

198 Q. Now that this has been offered in evidence, Mr. Tribby, I ask you how it is it was not on that same day known to you that

the deed of trust was \$4750; the receipt states \$4750? A. I don't know anything about that. It may have been known at that time—I don't know.

Mr. BOYD (to counsel for defendant): What is the date of the receipt?

Mr. BALDERSON: October 6th.

199 Q. Mr. Tribby, when Mrs. Beverley and Talty, or either of them, called to sign the deed to this property, how much did you offer them in payments? A. I think the balance was \$110—\$120, that was what it was.

200 Q. \$120?

Mr. BOYD: What?

Mr. BALDERSTON: I object to counsel for the complainant asking the witness any questions while I am examining him.

A. \$110.19 is the way I figured it out—the amount I offered at the time.

201 Q. Did you not offer at first \$88, Mr. Tribby? A. I deducted that rent that I spoke about before, that I thought I was rightfully entitled to, inasmuch as we had calculated the rent prior to the time I had bought the property.

64 202 Q. How much was the rent, Mr. Tribby? A. \$26.50.

203 Q. That makes \$83.69, deducted from \$110.19. Did you not as a matter of fact offer \$88, Mr. Tribby? A. No, it was \$110 less the \$26.50.

204 Q. In the answer of the defendants Beverley and Talty, they state that you agreed to pay them \$300 over and above the outstanding indebtedness on the property, with the exception of the taxes. Now, I want to know if that was not the contract or verbal agreement between you and these defendants? A. I admit that Mrs. Beverley asked that question, but I told her it would be impossible for me to tell exactly what would be remaining after the debts and expenses were taken out.

Mr. BALDERSTON: That is all, I guess.

Redirect examination.

By Mr. BOYD:

205 Q. Mr. Tribby, in your last answer you stated that you could not possibly tell what would be remaining; kindly explain what you mean by that? A. You mean the amount due Mrs. Talty and Beverley?

Mr. BOYD: Mr. Examiner, kindly read Mr. Balderston's last question and the answer to it, and then my question based upon that.

Whereupon the questions and answer were read as requested.

65 A. When property is bought and sold it is always sold with a clear title to the purchaser, and the purchaser is unable to ascertain the amount of the taxes—especially the amount of the taxes, water rent and the other expenses that should be

charged against the property at the time, and this was what I meant by the statement that it would be impossible for me to say what would be remaining.

Mr. BALDERSTON: I object to the question on the ground that the same question has been propounded by me for the defendants and answered by this same witness.

206 Q. Mr. Tribby, you have stated in the course of your testimony that the agreement was that you should pay the defendants Talty and Beverley \$5300 for the property. Then you further stated that the question was asked you by one of these defendants what would be remaining, and you have explained what was meant by that in your reply. Now, I want to know whether that question was asked after or before it was agreed that the property should be sold to you for \$5300; do you understand the question? A. Yes, I do. We were deciding the question at the time of that conversation. That would appear to be the vital part. Mrs. Beverley stated that she would like to have about three hundred dollars out of it, as I stated before, to settle some debts, and I don't think that we had closed the deal at the time that conversation took place, but the last words I said was that I would give her \$5300, and I didn't think it would be far from three hundred dollars that she would receive.

207 Q. Do I understand you to mean by that that after assuming the two trusts existing on the property, and the payment of all these expenses which the defendants agreed to assume, that the balance due in cash from you to the defendants, would be in the neighborhood of three hundred dollars?

66 Mr. BALDERSTON: I object to the question as leading.

A. Yes, that was my impression.

208 Q. I don't think you understand the question, because your answer is not responsive to it.

Mr. BALDERSTON: I object to the remarks of counsel examining the witness, and I object to Mr. Boyd's question—the form of it.

209 Q. Mr. Tribby, I want to know what you mean when you say that you said to her that you did not think it would be far from three hundred dollars which she would receive? A. You want to know what I mean by making that statement?

210 Q. Yes, what you mean by that statement? A. Well, I meant that as far as I could guess she would get in the neighborhood of two or three hundred dollars.

211 Q. In what way? A. In cash, after all the indebtedness was paid.

212 Q. From whom? A. From me.

213 Q. For what? A. For her equity in the property.

214 Q. So you mean that after you assumed the two existing trusts, paid the expenses which these defendants agreed to pay, deducting these items from the \$5300 which you agreed to pay for the property, there would then be due in cash from you to these defendants between two and three hundred dollars?

Mr. BALDERSTON: I object to the question as leading.

A. I do.

67 215 Q. At the time this conversation took place to which we have just been referring, you then had not before you the amount of the taxes and special assessments, and so on, that might exist against this property? A. I had no memorandum of any indebtedness of any description against the property at the time that conversation took place.

216 Q. In the course of your cross-examination, Mr. Tribby, you stated that this conversation to which we have just been referring took place at the time the trust—the second trust to you—was being executed—being closed up. That is correct, is it not? A. Yes.

217 Q. At what time did you distribute the money to the bank, Attwell and Treadwell and other sources, for which the second trust was given to you; was it before or after the signing of the trust? A. It was after.

218 Q. After? A. I think the following day the accounts were settled.

219 Q. Do you remember the day on which the second trust was signed? A. No, I do not.

220 Q. Well, in paragraph 4 of your bill you state that it was October 5th. A. Yes.

221 Q. You swore to that bill, and knew the date at the time you swore to it? A. Yes, that is correct.

68 222 Q. Will you kindly look at Defendants' Exhibit No. 1, which is a receipt for money paid by you to the bank, and state the date of that receipt? A. October the 10th.

Mr. BROWN: The 6th.

WITNESS: It is on there; the date of the receipt shows for itself; it is dated October the 6th.

223 Q. October the 6th. So that bears you out in your statement that the money was not distributed until the day following the signing of the trust, which was also the day on which the conversation was had with reference to the sale? A. It had to be, because it was in the afternoon when the trust was executed.

224 Q. Mr. Tribby, who made this payment at the bank for which this receipt is given? A. I could not tell; perhaps one of the clerks in the office did.

225 Q. Did you do it personally? A. No, I did not.

226 Q. Had you ever seen the receipt before the dispute in this matter arose? A. No, I knew it had been paid; that matter had been placed with Mr. Brown—he attended to that.

227 Q. And you had never examined this receipt? A. I had never examined this receipt, no.

228 Q. Mr. Tribby, Exhibit No. 8, already in evidence which is a letter dated October 21, 1904, signed by Annie Lee Beverley and Elizabeth Lawrence Talty, addressed to you, closes as follows: "and I therefore tender to you herewith the deposit made by you. Yours

truly." Was any tender made by that letter, Mr. Tribby?
69 A. No, no tender made to me in person.

229 Q. Was there any money, or anything accompanying that letter? A. No, nothing but the letter placed on my desk.

230 Q. Did you at that time ever authorize anybody to receive that tender for you? A. No indeed.

231 Q. Have you as a matter of fact received back that deposit, or any part of it? A. I have received back no part of it.

232 Q. Or any of the items which you advanced on account of this contract? A. No.

Mr. BOYD: That is all.

Recross-examination.

By Mr. BALDERSON:

233 Q. What position has Mr. Brown in your office? A. He is my attorney.

234 Q. And his particular place of business is where, in your office? A. Yes, sir.

235 Q. He is your attorney? A. Yes.

236 Q. Does he transact any other business for you besides that of attorney? A. He does.

237 Q. Is he a partner? A. No.

70 —. Mr. Tribby, one more question; you stated in your redirect examination that you did not know anything about these expenses standing against the property—whether they were for a year or for a month? A. No, until I received the tax certificate I could not.

238 Q. You knew as a matter of fact that Mrs. Beverley had only owned the property since April, did you not? A. I did not.

Mr. BALDERSTON: You did not know—that is all.

CHARLES E. TRIBBY.

Subscribed before me this 16th day of December, 1904.

P. H. MARSHALL,
Examiner in Chancery.

Whereupon ANNIE LEE BEVERLEY, a defendant herein, and a witness called on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BOYD:

239 Q. Mrs. Beverley, in paragraph 8 of the joint answer of yourself and Mrs. Talty is this language: "That the conveyance to the defendant Charles F. Johnson was a *bona fide* conveyance made by these defendants to the said defendant Johnson through their real estate agents." Kindly state who the real estate agents were to whom you refer?

71 Mr. BROWN: Well, the record shows that.

A. It was Mr. Daniel; the firm is Daniel, Willige & Gibbs.

240 Q. Is it not Willige, Gibbs & Daniel, Mrs. Beverley? A. Perhaps it is; I know Mr. Daniel; Willige, Gibbs & Daniel then.

241 Q. Is any member of that firm present at this session? A. Mr. Daniel.

Mr. BOYD: That is all.

ANNIE LEE BEVERLEY.

Subscribed before me this 23rd day of December, 1904.

P. H. MARSHALL,
Examiner in Chancery.

NOTE.—At this point an adjournment was taken until Thursday, December 8, 1904, at 7 30, P. M.

P. H. MARSHALL,
Examiner in Chancery.

72 Whereupon O. P. M. BROWN, a witness of competent age, having been first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. BOYD:

242 Q. Mr. Brown, you are the Brown who appears as one of the attorneys of record for the complainant in this case? A. I am.

73 243 Q. State kindly, what position, if any, you hold with the complainant? A. I am the attorney for the National Loan & Investment Company of which Mr. Tribby is the manager.

244 Q. You were present at the session of the testimony which was taken yesterday in this case, and heard the testimony? A. Yes, sir, I did.

245 Q. Mr. Tribby testified with reference to the second trust which he now holds on the property in controversy; will you state please if you had anything to do with the preparation of the papers in the matter of that loan? A. Oh yes, I believe all the details in that loan were left to me.

246 Q. Mr. Tribby stated that the money for which that trust was given as security was distributed to creditors of the defendants, Beverley and Talty and was not given directly to them; will you state whether or not you had anything to do with the distribution of that money? A. The amount due the Central National Bank as interest on the first trust loan was paid by me.

247 Q. Did you receive a receipt from the bank for that money? A. I did.

248 Q. I hand you Defendant's Exhibit No. 1 and ask you to state whether or not that is the receipt? A. That is the receipt I received from the bank.

249 Q. Do you remember on what date the second trust was signed and the matters with reference to it closed up?

Mr. BALDERSTON: I object to that as the second trust will show on what date it was signed.

74 Mr. BOYD: The trust does not necessarily show the date on which it was signed, but it will show a date which is not necessarily the date on which it was signed.

Mr. BALDERSTON: I object on the further ground that the deed would be the best evidence.

A. The trust was executed before me as a notary public on October 5.

250 Q. What year? A. 1904.

251 Q. Was the money which you have testified you paid to the bank, paid on that date? A. The money was paid to the bank on October 6.

252 Q. The day following? A. Yes, sir.

253 Q. What did you do with the receipt which is in evidence as Defendant's Exhibit No. 1? A. Filed it with the papers in the case.

254 Q. Did you not exhibit it to Mr. Tribby? A. I did not.

255 Q. As far as you know when did he see this receipt first? A. To the best of my knowledge he didn't see the receipt until October 8.

256 Q. That is, 1904? A. 1904.

257 Q. Prior to October 6, which was the date on which Mr. Tribby testified that the negotiations for the purchase of this property were concluded, had you or not any conversation with Mr. Tribby with reference to the purchase of this property by him? A. I had.

75 258 Q. Kindly state the substance of that conversation?

A. On the evening of October 5, after Mrs. Beverley and Mrs. Talty had executed the second trust deed to Mr. Tribby, he stated that he had been talking with them about buying the property, and stated further that he had a notion to offer them \$5300 for the property. We discussed the value of the property and figured up what the income would be and I advised him to offer them \$5300 for the property.

259 Q. You have already referred to the negotiations which Mr. Tribby had with the defendants, Beverley and Talty, on the 6th day of October, 1904, will you state whether or not you were present? A. Mrs. Beverley and Mrs. Talty were in one of Mr. Tribby's private offices in the Home Life Building. I was in and out of the room several times in the course of the conversation about the sale of the property.

260 Q. Did you overhear the conversation or any part of it? A. I heard them talking in a general way about selling the property, but finally after they had agreed upon a price Mr. Tribby called me to the door and told me that Mrs. Beverley and Mrs. Talty had agreed to accept \$5300 for the property and instructed me to prepare a receipt as he intended to give them a deposit.

261 Q. Was that in their presence? A. It was.

262 Q. And within their hearing? A. Yes.

76 263 Q. Well, what did you do? A. I called Mr. Tribby aside and asked him how much deposit he was going to give

them and he said he thought we had better give them \$100. I accordingly prepared a receipt to be signed by Mrs. Beverley and Mrs. Talty acknowledging the receipt of \$100 as a deposit for the transfer of their property to Mr. Tribby on October 8. I do not remember whether the amount of the consideration was stated in the first receipt or not.

264 Q. Was this receipt signed? A. No sir.

265 Q. Why not, if you know? A. When the receipt was offered to Mrs. Talty and Mrs. Beverley for their signatures, Mrs. Beverley spoke up and says, "Oh, I didn't want one hundred dollars tonight. If I have it I will spend it. You had better give me fifty." Accordingly I tore up the first receipt and drew a second receipt for fifty dollars which I gave to Mr. Tribby.

266 Q. What was done with that receipt if you know? A. Which one?

267 Q. The second one? A. Mr. Tribby took it into his private office and when he brought it out it was signed by Mrs. Beverley and Mrs. Talty.

268 Q. I hand you Complainant's Exhibit No. 1, Mr. Brown, and ask you to state whether or not that is the receipt to which you have just referred in your testimony? A. That is the second receipt that I prepared.

269 Q. Was the deposit for which this is a receipt paid to Mrs. Talty and Mrs. Beverley? A. I saw Mr. Tribby take fifty dollars into the private office. I don't know whether he gave it them
77 or not.

270 Q. Do you know what Mr. Tribby then did with reference to preparing to close the deal? A. He instructed me to examine the title or rather have the title examined more thoroughly than he had on account of the first and second trust loan, to obtain a tax certificate from the tax office and prepare the deed for their signatures—Mrs. Beverley and Mrs. Talty's signatures.

271 Q. Do I understand you to mean that he instructed you to attend to the matter of closing up the—— A. (Interrupting.) He instructed me to attend to all the details.

272 Q. And what did you do acting under those instructions? A. I obtained a tax certificate from the tax office.

273 Q. I hand you Complainant's Exhibit No. 4 and ask you if that is the tax certificate? A. That is the tax certificate. I obtained from Mrs. Talty the tax bill she had received from the collector of taxes.

274 Q. I hand you what purports to be a tax bill, which is marked Complainant's Exhibit No. 5, and ask you whether or not that is the tax bill to which you refer? A. That is the bill Mrs. Talty gave me.

Mr. BOYD: While this is marked Complainant's Exhibit No. 5, it is my impression it has not been introduced into evidence, and I now offer it to be again marked or still keep the mark of Complainant's Exhibit No. 5.

275 Q. Proceed, what else you did? A. I examined the
78 title to the property more carefully than I had done in the
first instance and I prepared a deed conveying the property
from Mrs. Beverley and Mrs. Talty to Mr. Tribby. I also figured
up the amount of cash that would be paid to Mrs. Talty and Mrs.
Beverley.

276 Q. Did you make or figure out the details as to the items
which would go to make up the consideration of \$5300 which Mr.
Tribby agreed to pay? A. I did.

277 Q. Will you kindly state, Mr. Brown, what constituted that
consideration or in what manner it was to be paid? A. The first
trust of \$4750 was to be assumed by Mr. Tribby. The second trust,
although it was for eight notes of \$45.60 was to be assumed by Mr.
Tribby for \$306.05.

278 Q. Was that more or less than the face of the trust? A. It
was considerably less, it being the exact amount Mr. Tribby had
advanced on account of the second trust.

279 Q. You say \$306.05 being the exact amount advanced on the
second trust—advanced by whom and to whom? A. Advanced by
Mr. Tribby to Mrs. Talty and Mrs. Beverley.

280 Q. What else entered into that consideration? A. To this
amount was to be added the taxes then unpaid, but in estimating
the taxes I took as a basis for my figuring, the tax bill given to me
by Mrs. Talty.

281 Q. You mean Complainant's Exhibit No. 5? A. Exhibit
No. 5.

282 Q. Just look at that and state the amount of taxes
79 shown to be due by that bill? A. \$13.76. The tax from
July 1st to October 8th was not charged against Mrs. Beverley
or Mrs. Talty.

283 Q. This tax bill shows the taxes due on the property to what
time? A. July 1st, 1904.

284 Q. What else? A. These amounts together with one month's
rent, amounting to \$26.50, were added together and the result de-
ducted from \$5300. The remainder was the amount which was to
be paid by Mr. Tribby to Mrs. Beverley and Mrs. Talty in cash.

285 Q. Mr. Brown, Mr. Tribby testified with reference—you and
Mr. Tribby both testified with reference to a deposit and other funds
having been advanced to the defendants, Beverley and Talty, have
you or have you not taken them into consideration in your state-
ment? A. When I said that was the amount to be paid in cash, I
meant whatever was advanced to them as a deposit or otherwise of
course should be deducted at the time of signing the deed.

286 Q. What was the amount of the advances made by Mr.
Tribby on account of this before the date on which it was to be
finally settled? A. Mr. Tribby advanced fifty dollars cash at the
time the agreement was entered into and subsequently he advanced
fifty dollars and at another time twenty dollars to Mrs. Beverley
and Mrs. Talty, making altogether one hundred and twenty dollars.

287 Q. What amount in cash would that leave due from
80 Mr. Tribby to Mrs. Beverley and Mrs. Talty? A. I would
have to figure it up. After I had figured this matter up—

how much cash they had received, Mrs. Beverley and Mrs. Talty objected to the rent of \$26.50 being deducted from the amount of cash they were to receive and Mr. Tribby allowed them the \$26.50.

288 Q. Kindly explain at this point about that \$26.50 rent; how that entered into the matter and became a subject of dispute? A. This property—I will illustrate—is a two-flat property—there are two apartments. As I understand it, in order to get tenants the agents for the property had given one of the tenants a month's rent free and at the same time the tenant had paid a month, so that the tenant at the time he entered into possession of the property had his rent paid for two months in advance. We didn't know that when we were negotiating with Mrs. Beverley for the property and when she seemed to feel aggrieved at the amount she was to receive, Mr. Tribby agreed to let her have the \$26.50, though we felt it was due us. So that this \$26.50 was added to the amount of cash they were to receive according to my first calculations. After all these accounts had been adjusted we found there would be \$110.19 due Mrs. Beverley and Mrs. Talty as their share of the money over and above the \$120 they had already received.

389 Q. Why did you think or say that you were entitled to that full month's rent? A. Because as the agreement was explained to me, the rent, taxes and water rent were to be adjusted to the date of the transfer.

290 Q. And was this rent for a time subsequent? A. This was for the month beginning October 16.

81 291 Q. Beginning October 16? A. Yes sir.

292 Q. And the negotiations were to have been closed? A. On October 8th.

293 Q. You say Mr. Tribby waived that? A. He waived his right to the \$26.50 and agreed that they should receive that amount.

294 Q. Mr. Tribby has testified that the deal was to be closed on the 8th—state whether or not you were prepared to close it on that date? A. I had my deed in fee simple prepared and ready on October 8th.

295 Q. Was it the deed which is attached as an exhibit to the complainant's bill? A. Yes, the deed is in my handwriting.

296 Q. Was Mr. Tribby ready in every other respect on that date to close the deal? A. He was, and we notified Mrs. Talty on the morning of October 8th to appear with her mother on that date and sign the deed.

297 Q. Did they come? A. I am informed they did not. I left for St. Louis and was away for several weeks.

Mr. BALDERSTON: I object to the answer.

298 Q. You left for St. Louis when? A. Saturday afternoon.

299 Q. Had you been at the office during the forepart of the day? A. I was at the office up to 12 o'clock.

300 Q. And up to that hour they had not called? A. No; 82 I believe I was there a little later than 12 o'clock—possibly one or two o'clock.

301 Q. You say you were absent from the city for several weeks

thereafter? A. Ten days or two weeks. I returned to Washington on October 20th, in the evening, that was Thursday.

302 Q. What was the next thing that you knew, or the first thing that you learned with reference to this transaction after your return? A. Friday morning, October 21st, I came down to the office and Mr. Tribby stated in a casual way that he was having some trouble with Mrs. Beverley about the property.

303 Q. That was the first thing you heard after you left the city? A. Yes.

304 Q. What did he state in substance? A. That was the substance of his words, that he was having some trouble with Mrs. Beverley.

305 Q. Do I understand that he did not indicate the nature of the trouble? A. He did not.

306 Q. What was the next thing that occurred, please? A. Mr. Balderston the attorney for the defendants in this case called with Mrs. Talty and requested to see Mr. Tribby. I told him that Mr. Tribby was not in; that I was attorney for the Company and if he had anything to say he could talk to me. Thereupon he said he was there to make a tender of \$120 and pulled some bills from his pocket, because he said, Mrs. Beverley and Mrs. Talty had decided not to sell the property, and I said to him I could not accept
83 the tender. He said "very well," and put the money back in his pocket and walked out.

307 Q. Did he leave anything at all with you? A. Now, I am in doubt about that. It is my impression that he left a letter.

308 Q. I hand you Complainant's Exhibit No. 7 and ask you whether or not that is the letter? A. I cannot say positively whether this is or not. We had considerable correspondence with Mrs. Beverley; we received several letters from her. My impression is that this is the letter, but I could not say positively. My recollection is I couldn't say positively whether he left the letter at all.

309 Q. Had you any authority from Mr. Tribby to receive the \$120 which Mr. Balderston offered? A. I had not.

310 Q. Well, what next, if anything, had you to do with the matter? A. The same afternoon, Friday, I was called to the phone and the party stated (who I afterwards learned was Mr. Daniel of the firm of Willige, Gibbs & Daniel)—called up and stated, said he wanted to know how much we would take to settle the second trust that we held on the property of Mrs. Beverley and Mrs. Talty, the property in controversy in this case. I told him that we were not prepared to settle at all. That was about the substance of the conversation as I remember. Oh, yes, Mr. Daniel also stated that he represented someone who had purchased or was about to purchase the property, and that they had a deed which was going to be placed on record from Mrs. Beverley and Mrs. Talty to their client.

84 311 Q. Did Mr. Daniel state whom he was representing? A. He did not.

312 Q. But simply asked whether they could take up the second trust? A. He said they wanted to take it up and I told him we did

not want to dispose of it because we were buying that property ourselves.

313 Q. What day was that? A. Friday, October 21, 1904.

314 Q. What time of day was it? A. In the afternoon.

315 Q. Can you fix the hour approximately? A. About two or three o'clock.

316 Q. What next transpired, Mr. Brown, that you had any connection with? A. Saturday morning, the following day, October 22, 1904, we noticed in the court record the transfer of this property of Mrs. Beverley and Mrs. Talty to Charles F. Johnson. I immediately called upon Mr. Daniel at his office to find out the meaning of the transaction.

317 Q. Had you a conversation with Mr. Daniel? A. I was referred by one of the clerks to Mr. Daniel and asked him why they bought this property from Mrs. Beverley and Mrs. Talty or had a deed placed on record when they were under contract—and Mrs. Beverley and Mrs. Talty had agreed to sell the property to Mr. Tribby, and he stated he was not prepared to discuss that point; that he would be glad to discuss with me whether we wanted to dis-

85 pose of the second trust; that he was prepared to buy. I was endeavoring to learn the inside of the deal and I avoided any particular reference to that particular phase of the question, and endeavored to secure from him some admission that he knew of our transaction with Mrs. Beverley and Mrs. Talty.

318 Q. Well, as a result of that what did Mr. Daniel say? A. Mr. Daniel was very diplomatic in his expressions but I finally elicited from him the fact that he had consulted the attorney for his firm and in Mr. Daniels own words the attorney had advised him that they were perfectly safe and to go ahead; that we could not trouble them about the matter at all. I asked Mr. Daniel point blank the question, "Didn't you know that Mrs. Beverley and Mrs. Talty had agreed to sell this property to Mr. Tribbey?" And he said, "I am not prepared either to admit or deny."

319 Q. The Mr. Daniel you are now speaking about is the gentleman who is now present here? A. Yes sir. It was after I asked him this point blank question that he said he had taken legal advice and was advised he was perfectly safe. Furthermore, I asked Mr. Daniel who this Mr. Charles F. Johnson was who had purchased the property or to whom the transfer had been made. Mr. Daniel said, "He is a client of ours who has moneey here for investment." I said I would like to meet Mr. Johnson, is he in the city? Mr. Daniel replied, "No, he is not in the city, but I think he will be back tomorrow." That was about the substance of my conversation with Mr. Daniel.

320 Q. Was any reference made to any possibility or probability of litigation, and what the result might be? A. I said to Mr.

86 Daniel just as I was about to go, "Of course, Mr. Tribbey will not permit himself to be euchered out of this property in this way and this will only result in litigation that will be expensive to your client or to you." Mr. Daniel says, "It won't cost me anything." I says, "It will cost your client something,"

and he said, "No, I guess the only person who will lose out in it will be Mrs. Beverley."

321 Q. That ended your conversation with Mr. Daniel? A. Yes, sir.

322 Q. Mr. Tribby in the course of his testimony spoke about an interview with Mr. Charles F. Johnson, and also stated that you were present; is this correct? A. Saturday afternoon, October 22nd, we consulted the Washington City Directory and found there was only one Charles F. Johnson named in the directory. Sunday Mr. Tribby and I called at Mr. Johnson's house. Mr. Johnson was at home—in fact Mr. Johnson came to the door and I was present while Mr. Tribby had the interview he has referred to in his testimony.

323 Q. Did you hear that interview? A. Yes, sir, I participated in it.

324 Q. Kindly state in your own language the substance of that interview both between Mr. Tribby and Mr. Johnson and yourself and Mr. Johnson? A. Mr. Tribby opened the conversation by introducing himself and me and stated that he had called to see Mr. Johnson relative to property he had bought on O street in Georgetown. Mr. Johnson replied, I have not bought any property in Georgetown. Mr. Tribby says I saw in the court record that Mrs. Beverley and

87 Mrs. Talty have transferred a piece of property on O street in Georgetown to you. Mr. Johnson replied "Oh, yes, I saw that in the paper myself and as I am the only Charles F. Johnson in the city I wondered who this man could be that this property was transferred to. At that point in the conversation I asked Mr. Johnson "Are you not employed by the firm of Willige, Gibbs & Daniel?" He said, "I was at one time employed by this firm but I have not worked for them for several months as I have been away on account of ill health." I said, "Well this transfer was made, I understand, through the firm of Willige, Gibbs & Daniel and as you were formerly employed there we supposed you were the Johnson to whom this property had been transferred" and he said, "No, I don't know anything about it." I then said to Mr. Johnson "Have you any funds for investment with Willige, Gibbs & Daniel?" And he said, "No, I have not but I am the trustee with Mr. Daniel for the estate of my grandfather." I then said, "Would it be possible that Mr. Daniel would invest some of your grandfather's estate in this property in Georgetown without consulting you as a co-trustee?" And he said, "No, he wouldn't buy any property with my grandfather's estate without consulting me." We then apologized for intruding and withdrew.

325 Q. Where did you say Mr. Johnson then lived? A. He lived on G street, somewhere the other side of the War Department, I can't remember now.

Mr. BOYD: Mr. Balderston, you admit that is the Johnson in this case?

Mr. BALDERSTON: Oh, yes, the answer does that.

326 Q. Mr. Brown, Mr. Tribby further testified with reference to

a conversation over the telephone which he had with Mrs. Talty on the following day, Monday, were you present at the time that
88 conversation took place? A. I was with Mr. Tribby when he called Mrs. Talty up on the telephone.

327 Q. Did you hear any part of that conversation? A. I did. I heard Mr. Tribby's part of it. Of course I couldn't hear Mrs. Talty's part.

328 Q. You have already stated that you were present yesterday and heard his testimony? A. Yes, sir.

329 Q. Will you state whether or not your recollection of his portion of the conversation was the same as he testified yesterday it was? A. In substance the same, yes.

Cross-examination.

By Mr. BALDERSTON:

330 Q. Mr. Brown, I understood you to say you were employed by the National Loan & Investment Company, is that right? A. I said I was the attorney for the National Loan & Investment Company.

331 Q. What is that, a corporation, partnership or what?

Mr. BOYD: We object on the ground that it is entirely immaterial, irrelevant and has no connection with this case in any way, shape or form. (To witness:) It is with you whether you want to answer the question. It strikes me it is so foreign to the subject matter of this litigation——

Mr. BALDERSTON: There is nobody here Mr. Boyd——

Mr. BOYD: I will insist on the objection and ask the examiner to certify it to the court.

89 A. I am willing to state that so far as I know the National Loan & Investment Company is not a corporation.

332 Q. Is it a partnership?

Mr. BOYD: Same objection.

A. I am not prepared to answer.

333 Q. Is Mr. Tribby a partner or interested directly therein as manager for the Company?

Mr. BOYD: Same objection. That there may be no misunderstanding as to my objection, I want to again repeat that the National Loan & Investment Company is not interested in this case so far as the record discloses. It is purely a matter between Mr. Tribby and the defendants here and the business of other people should not be brought into question and discussed and exposed in a litigation between other individuals.

334 Q. What about that, Mr. Brown? A. In my capacity as attorney I must claim the privilege of an attorney and refuse to answer the question, the business of the National Loan & Investment Company being a matter which has come to my attention in a professional and confidential manner.

335 Q. What is the business of the National Loan & Investment Company?

Mr. BOYD: Same objection.

A. I decline to answer the question.

336 Q. Is not Mr. Tribby conducting business under the name of the National Loan & Investment Company?

Mr. BOYD: Same objection as before.

337 Q. (Continuing:) Mr. Tribby who is the complainant in this cause? A. I decline to answer.

90 Mr. BOYD (continuing objection): And in addition, the professional privilege which he at the same time has claimed.

338 Q. Are you attorney for Mr. Tribby, Mr. Brown?

Mr. BOYD: I object to the question because the record shows that Mr. Brown is attorney for Mr. Tribby in this particular cause.

A. I am the attorney of record in this cause.

339 Q. Aren't you attorney other than in this cause; aren't you employed regularly as his attorney?

Mr. BOYD: We object to that, it being a matter of professional connection which the attorney has the privilege of declining, and not only the privilege but it is his duty as attorney to refuse to answer such questions without the assent of his client.

A. I must decline to answer questions along that line, Mr. Balderston.

339½ Q. Mr. Brown, Mr. Boyd asked you how you received this Exhibit No. 7 of the complainant; whether or not you received it from me, do you remember it? A. I said on direct examination that I was not positive I received anything but I was under the impression I did.

340 Q. In your direct examination you stated that I called and pulled out of my pocket some bills and stated that that was \$120 which I tendered as Mrs. Beverley's and Mrs. Talty's because they didn't agree to sell the property; I want to ask you if you do not know as a matter of fact that when I called that I read to you the contents of this Exhibit No. 7 and that I did not vary from this and that I left this with you at the time and that I at the same time produced \$120 in cash and that you refused it; is that correct?

91

Mr. BOYD: I object to that question for the reason that it misconstrues Mr. Brown's direct testimony if I remember it correctly. Mr. Brown's testimony was to the effect that Mr. Balderston called and said that he wanted to tender \$120 and produced a roll of bills, while Mr. Balderston in his question quotes Mr. Brown as testifying that Mr. Balderston produced a roll of bills which he, Mr. Brown, said contained \$120.

A. That is rather a long question to answer. As to the first part of the question, you have misstated my testimony on direct examination. As to the latter part of the question, I will say that since you have called my attention to it I believe I do have a recollection of your reading a paper to me but whether it was this paper which

has been offered in evidence as Exhibit No. 7 I cannot recall. I am under the impression, however, that it was, Mr. Balderston.

341 Q. That it was? A. That it was the paper, yes, sir.

342 Q. And you refused it, did you Mr. Brown? A. As I previously stated, I informed you that I could not accept the tender.

343 Q. Why did you refuse it?

Mr. BOYD: I object to the question. It is immaterial as to why he refused it.

92 A. I refused it because I had no authority to accept it. As a matter of fact I didn't know that \$120 was the amount that Mrs. Beverley and Mrs. Talty had received from Mr. Tribby, as a portion of that deposit was paid to them while I was in St. Louis.

344 Q. Did you not state when I called that you were Mr. Tribby's attorney? A. I think I did make a statement to that effect.

345 Q. Now, Mr. Brown, you stated on direct examination that you made an examination of the title when Mrs. Beverley agreed to sell this property to Mr. Tribby; now, hadn't you made an examination before? A. I stated on direct examination that I made a more careful examination of the title.

346 Q. What did your examination consist of? A. It consisted of an *an* examination of continuation of title furnished by the Title Company.

Mr. BOYD: We object to the question and answer as immaterial, irrelevant and improper.

347 Q. What Company? A. I don't recall what the Title Company was.

348 Q. Why did you make a more exhaustive examination of the title then than you did when you made the loan of \$305?

Mr. BOYD: We object to that question also. The examination of the title was a feature of an agreement with which these defendants had nothing at all to do. It is stated by the complainant and admitted by the defendants in their answers that this expense should be borne by the complainant and he therefore was at liberty to make any examination or attempt any examination which he desired. It is further shown that he has made no effort at all to charge these defendants with this examination and he has not complained of the title not being good.

93 A. I made a more careful examination because I considered that the purchase of property involving \$5300 was more important than a small loan such as the one made in the second deed of trust.

349 Q. Mr. Brown, going back to the time the tender was made, did you tell me that you had no authority to accept the money—\$120? A. The statement I made you was I cannot accept that tender.

— Mr. Brown, there were eight notes given, were there not, for this loan of \$305.05?

Mr. BOYD: We object to that question as it is entirely foreign to

this case. Admissions in the answer of the defendants correspond precisely with the complainant's position on that matter, therefore no good end can be subserved by inquiring into that matter.

A. The loan was \$306.05 instead of \$305.05 as you have stated. There were eight notes, yes.

350 Q. How many of those notes have been paid? A. I do not know.

351 Q. Mr. BOYD: Question objected to unless the time is fixed. For this reason I move to strike out both the question and answer.

Mr. BOYD: No re-direct examination.

O. P. M. BROWN.

Subscribed before me this 15th day of December, 1904.

P. H. MARSHALL,
Examiner in Chancery.

94 Whereupon: ANNIE LEE BEVERLY, one of the defendants, having been first duly sworn, was examined and testified in her own behalf as follows:—

Direct examination.

By Mr. BALDERSTON:

Q. Mrs. Beverly, will you state your full name, please? A. Annie Lee Beverly.

95 Q. And you are one of the defendants in this cause, are you? A. Yes, sir.

Q. Mrs. Beverly, I will ask you whether or not you called at the office of Mr. Charles E. Tribby on or about the 5th day of October, and if so why you called? A. I called about that time, I can't remember the exact day, but it was about that time, in answer to a letter telling me to come down to sign the papers for the sale, last October.

Q. Before receiving that note what business transaction had you had with Mr. Tribby? A. Why I just told it, I called to see Mr. Tribby to borrow the money for this trust.

Q. For what trust? A. Interest on \$4750. that was due, in charge of the President of the Central National Bank.

Q. How much money did you borrow, if any, from Mr. Tribby? A. I borrowed for the interest \$106.05, I borrowed enough to pay him what I owed him, \$28.50 for myself, I think in the neighborhood of \$65. for the two.

Mr. BOYD: We object to all this.

Q. How much was the whole amount you borrowed? A. \$306.05.

Q. How much were you to pay for that \$306.05?

Mr. BOYD: We object to that.

A. Three per cent. a month.

Q. What security, if any, did you give for it? A. I gave him the rents, the right to collect the rents, which amounted to
96 \$49. or \$49.50 I don't remember which.

Q. Did you, or did you not give him a deed of trust on the property to secure that amount, the \$306.05? A. I signed eight notes to collect the rents.

Q. He was to be secured by a deed of trust for that \$306.?

Mr. BROWN: Objected to as leading.

A. Yes.

Q. After that what happened? A. After we had signed those notes in that matter \$306.05 I said I had an offer, a purchaser, of \$5400. through Mr. Simpson,—after expenses were out I could have \$300. clear, after it was settled.

Mr. BROWN: I move to strike out the answer as no time or place has been fixed when this conversation occurred, nor the person to whom it was addressed.

A. (continuing): He said "I will give you that."

Mr. BROWN: Who said that?

A. Mr. Tribby. Meaning the \$300. And he said "If you sell to real estate people you will have commission fees, recording and expenses of that sort, it will bring down the sum of money you will get, whereas I will give you \$300. clear of everything except taxes, those you will have to assume. It will be no expense in any way, no deed no commission, not a cent in any way, except the taxes."

Q. What was the amount of the first deed of trust upon the property? A. \$4750.

97 Q. Then, Mrs. Beverly, do I understand that Mr. Tribby agreed to assume that trust of \$4750., also the second deed of trust, and after assuming them to pay all the expenses incident to the sale, or connected with it in any way, that you were to receive \$300. less the taxes?

Mr. BROWN: We object to that as leading.

A. That is just his offer.

Mr. BALDERSTON: I have just requested Mr. Marshall, the Examiner to whom the complainant had his case referred to take testimony for the purpose of having the Exhibits produced at this hearing. Mr. Marshall refuses to produce the Exhibits in the case at this hearing either through me or by me or any one for me, nor for Mrs. Murray, the Examiner, taking testimony at this sitting for the defendant. After the refusal he stated if counsel for the complainant agreed that the Exhibits be produced, he would do it, otherwise not. I now ask that the counsel for the complainant request Mr. Marshall to produce those exhibits at this hearing.

Mr. BOYD: Counsel for complainant have no objection at all to the Exhibits being produced here and would have consented without this statement being made on the record had they been requested. As to the request made by Mr. Marshall and his refusal to produce the Exhibits, counsel for the complainant had no knowledge what-

ever, until it was stated on the record by counsel for the defendants. That counsel for the complainant do not mean to intimate that they have any authority to request the Examiner to part with papers in his possession, but simply stated that they had no objection to the production of the papers at this, or any other hearing, if the Examiner who has them in charge feels that he is warranted in parting with the custody of them.

98 Mr. MARSHALL: As the Examiner for the complainant in this case, the Exhibits referred to were filed with me as a part of said complainant's case, and all of said Exhibits with the exception of one are complainant's exhibits. I stated to counsel for the defendants that I would surrender these exhibits to him, provided complainant's counsel consented thereto on record, so as to absolve me in case any of the exhibits were lost or misplaced. As I believe that I have no right to surrender exhibits of this character and as I have not been summoned as a witness in this case and as, at this time, I am particularly busy, I must decline to surrender these papers from my custody, as I believe I am officially or personally responsible for these papers. I asked counsel if he expected to be long, I said that I would remain here if he would not occupy too great a length of time, to which he replied he would not limit himself as to time.

Mr. BALDERSTON: I said I would expedite the hearing as much as possible. It is impossible for me to limit the time.

Q. Mrs. Beverly, did you ever sign the deed conveying this property to Mr. Tribby? A. No.

Q. Did you call at his office for that purpose? A. I did.

Q. And why did you not sign it? A. Because he offered me so much less than was right to accept.

99 Q. Now, how much had Mr. Tribby paid you? A. \$120 deposit.

Q. That was \$120. of the \$300. that you were to receive?

Mr. BROWN: Objected to as leading.

A. Yes.

Q. How much did he offer you, if anything, when you called to sign the deed? A. First \$88.

Q. Did you or did you not accept it? A. I declined to take ahold of it.

Q. And for what reason? A. That it was so much less than was due me.

Q. Then what else did he do after that? A. He then said he would withdraw a month's rent that he had charged against me and that would bring it to \$110. either \$106. or \$110. I think \$110.

Q. Did you accept that? A. I did not.

Q. And for what reason? A. That he owed me certainly \$50. more. He owed me the difference between \$120. and say \$14. for the taxes.

Q. And what else? A. Deduct that from \$300. He would owe me the rest.

Q. At the hearing held in the office of counsel for the complainant a few evenings ago, Mrs. Beverley, there was a receipt offered in evidence and which was filed as the "Complainant's Exhibit," and which has just been requested by me to be produced in this case, but Mr. Marshall refuses to produce it. Now, in that receipt it stated that you had received \$50. from Mr. Tribby, and at the right hand corner of the receipt there was indistinctly written the dollar mark and what may be taken to be the figure 5, the figure 3 and two naughts, with the mark under the two naughts, not indicating clearly what it was, whether it was \$53. or what other amount. And at the time that was produced by counsel for the complainant the complainant was asked, "When were those figures put on the receipt?" The complainant replied that it was after it was signed by you and Mrs. Talty. You then, Mrs. Beverly, stated, although you were not a witness in the case at that time, and had not been sworn, that it was there before you signed it, and the counsel for the complainant requested that the Examiner put that upon the record, which was done. Now, I would like you to state what you meant by that remark?

Mr. BOYD: The question is objected to first because it is leading, secondly because it is more in the nature of testimony by counsel, who is not on the stand as a witness, and not subject to cross examination, than it is a question.

A. I meant to say that I signed the receipt for \$50. after the \$306. had been borrowed. I thought at the testimony the other night that you were alluding to the trust of \$306. I said I signed for \$50. after the \$306. had been arranged. I knew nothing of \$53. I didn't know it was on the paper and it wasn't on the paper when I signed it. The receipt I suppose I should say.

Mr. BROWN: I move to strike out the last answer of the witness as not responsive to the question.

Q. Was the 53 on there before you signed it?

Mr. BROWN: Objected to as leading and that it is indefinite as to what 53 or on what the 53 appeared.

A. It was not.

Cross-examination.

By Mr. BROWN:

Q. How long have you lived in Washington? A. Five years last July, I think.

Q. Are you, at the present time the owner of an apartment house or any piece of property in the city of Washington? A. I am not.

Q. Have you an interest in any piece of property here in Washington? A. No.

Q. About eighteen months ago were you not the owner of a piece of property in the hands of Moore and Hill as your agents? A. I had a slight interest.

Q. Didn't you have some dealings with Mr. Tribby with respect to this property? A. Yes, sir.

Q. Isn't it a fact Mrs. Beverly, that you called at Mr. Tribby's office about eighteen months ago and obtained a loan of \$100. on this property? A. Yes, sir.

102 Q. Isn't it also a fact that at that time you gave as security for this loan an order assigning the rents of this property to secure him in the payment of the notes? A. I did.

Q. Isn't it a fact that you transferred your interest in this property to some other party before these notes had been paid? A. No, I did not.

Q. Isn't it a fact that these notes were never paid until after judgment had been obtained on these notes? A. \$100. was paid.

Q. Isn't it a fact that the judgment against you was something over \$40?

Mr. BALDERSTON: I object to this line of cross examination on the ground that it is not responsive to the examination in chief.

A. \$25.

Q. Mrs. Beverly, during the five years you have lived in Washington how many different pieces of property have you been interested in?

Mr. BALDERSTON: I object to the question as irrelevant, immaterial and not responsive to the controversy in this case.

Mr. BROWN: Counsel for the complainant wishes to state that the relevancy of this question and this line of cross examination will be s-own later in the proceedings.

A. Four pieces, not alone though.

Q. Is it a fact that you have at different times disposed of or traded with these pieces of property to other parties? A.
103 Some of it.

Q. Are you still owner of some property in Washington or have you any interest in any property in Washington? A. I have none.

Q. I don't understand your statement that you have only disposed of or traded away some of it, what has become of the balance? A. I sold it.

Q. Mrs. Beverly you owned some property, or are interested in some property in Virginia? A. No.

Q. Have you any interest in a farm in Virginia? A. No.

Mr. BALDERSTON: All this line of the cross examination of the witness is objected to.

Q. Isn't it a fact that one time you were interested in some property in Virginia? A. Yes, sir.

Q. Isn't it a fact that you are interested in some property in Vancouver, State of Washington? A. I have none, it has been transferred.

Q. Isn't it a fact that you were interested in some property in Vancouver? A. Yes, sir, but not at present.

Q. Have you sold your interest? A. I have.

Q. To whom?

Mr. BALDERSTON: Question is objected to and all like questions.

104 Q. To whom Mrs. Beverley? A. To my sister.

Q. On direct examination you stated that you had a certain conversation with Mr. Tribby after the loan of \$306.05 was settled, what do you mean by that statement? A. You (indicating Mr. Brown) had brought in the receipt for \$306. I had signed it, my daughter had signed it, you had gone out with the receipt in the other office,—with the eight receipts, I should say.

Q. Do I understand you to mean that it was after you had made the loan of \$306.05, after the papers had been signed, that is what you mean by saying settled? A. Yes, sir.

Q. Did I understand you to say on direct examination that Mr. Simpson a real estate dealer in this City, had offered you \$5400. for the property in Georgetown, and in this case? A. I mentioned that to Mr. Tribby.

Q. Is it a fact that you did have an offer of \$5400 from a real estate dealer in this City, for that property? A. I did.

Q. Do you know Mr. Simpson's first name? A. I do not.

Q. Do you know where his place of business is. A. With Moore and Hill.

Q. Mr. Simpson is connected with the real estate firm of Moore and Hill? A. Yes, sir.

Q. Do I understand you to say that after you had made
105 this statement to Mr. Tribby, that is, that Mr. Simpson had offered you \$5400 for your property, that thereupon Mr. Tribby offered to give you \$300. for your equity in the property, you made that statement on direct examination, is that correct? A. What is Equity.

Mr. BROWN: Your interest.

WITNESS: He offered me \$300. for everything clear, except the taxes.

Q. Can you fix or approximate the date when you received this offer from Mr. Simpson of \$5400. for your property in Georgetown?

A. No, I cannot.

Q. Can you give us about the date, was it as long as a week before you say you had these negotiations with Mr. Tribby? A. I can't tell just when it was.

Q. Was it a month? A. Oh, no.

Q. Within a month before you called? A. Yes.

Q. Then this offer by Simpson was made subsequent to September 5th, 1904? A. It was in the week before.

Q. You mean a week before you called at Mr. Tribby's office, October 5th? A. Yes, but I didn't call at his office October 5th, it wasn't as late as that.

Q. Was this offer made to you by Mr. Simpson, connected
106 with the firm of Moore and Hill, real estate dealers in this City, of \$5400, for your property, made to you by him within the space of one week before you called at Mr. Tribby's office and

had negotiations with him relative to the property in this case? A. If it was October 5th it must have been ten days before that.

Q. Was this offer made to you by Mr. Simpson within ten days before you had the conversation with Mr. Tribby? A. Yes, it certainly was.

Redirect examination.

By Mr. BALDERSTON:

Q. When this offer that you spoke of, for \$300. was made by Mr. Tribby, who was present?

Mr. BROWN: Question objected to as not proper redirect examination, also leading.

A. My daughter, Mrs. Talty.

Q. State whether or not anyone else was present besides Mr. Tribby, yourself and Mrs. Talty?

Mr. BROWN: Objected to as not proper re-direct examination.

A. No one.

ANNIE LEE BEVERLEY.

Subscribed to before me this 5th day of December A. D. 1905.

MARGARET M. MURRAY,
Examiner in Chancery.

107 Whereupon: Mrs. ELIZABETH LAWRENCE TALTY, one of the defendants, having been first duly sworn, was examined and testified as follows:—

By Mr. BALDERSTON:

Q. Please state your name in full? A. Elizabeth Lawrence Talty.

Q. You are one of the defendants in this case, are you? A. Yes, sir.

Q. State whether or not, from the first part of October, on or about the 5th of October 1904 you called at Mr. Tribby's office with your mother?

Mr. BROWN: Objected to as leading.

A. Yes, sir.

Q. State why you called? A. I called first to see about a loan. She wanted to borrow money to pay off the interest on the mortgage.

Q. State whether or not that loan was made to her? A. Yes, it was made.

Q. Can you state what the amount of that loan was, about how much? A. \$306.

Q. State whether or not, if you know, what interest you or your mother were to pay for that \$306.?

Mr. BROWN: Objected to as irrelevant and immaterial.

108 A. Three per cent. a month.

Q. State, Mrs. Talty, if you know whether or not, there was a deed of trust on the property to secure that loan?

Mr. BOYD: We object, the record speaks for itself.

A. The eight notes were signed by us giving the rents.

Q. After the arrangement for the loan was made what else happened in regard to the property?

Mr. BOYD: Objected to as leading.

A. My mother told Mr. Tribby that she had an offer from Mr. Simpson and he asked her the amount and she told him, and he said he would be willing to give that much himself.

Q. How much did Mr. Tribby agree to give?

Mr. BROWN: Objected to as leading.

A. He agreed to give \$300. over and above all mortgages interest and everything except the taxes.

Q. You had an interest in the property, did you not?

Mr. BOYD: We object to that, the record will show.

Q. State whether or not you and your mother signed the deed in fee?

Mr. BOYD: Objected to as the time is not fixed.

A. No, sir.

Q. Can you state about when all this took place?

A. Why when she—

109 Q. Can you fix the date?

Mr. BOYD: That question is objected to as the matters referred to therein are not designated.

Q. When were arrangements made about the loan? A. I suppose three or four days afterwards before she received any money.

Q. Did you ever call at Mr. Tribby's office with or without your mother to sign the deed? A. No, I called once to meet her, but we didn't sign the deed.

Q. State whether or not you called at his office for that purpose? A. We called there just to finish the settlements, what he was to pay us.

Q. State whether or not Mr. Tribby ever paid you or your mother the \$300? A. No, he did not.

Q. Did he ever offer to pay that sum? A. He offered to take it at that sum but he refused to pay the amount, he said he would.

Q. Do you mean he refused to pay the \$300.? A. Yes, sir.

Q. Were the taxes to be deducted from that \$300.?

Mr. BOYD: Objected to as leading.

A. Yes.

Q. State whether or not he ever gave any reason, or what the reason was, why he didn't pay you or your mother the amount, \$300.? A. He said he wouldn't pay the \$300. because he did not know the amount of the mortgage.

110

Q. What reason did he give, Mrs. Talty, for not paying the full sum?

Mr. BOYD: Objected to as leading.

A. Why he said he understood the mortgage was \$4800. instead of \$4850. My mother said she had told him it was \$4850. and he said he didn't understand it that way.

Q. Are you sure about the amount for that property in the deed of trust? A. No, because I never took much interest, the property was my mother's, I never had any payments. I have heard her speak of it.

Q. What did Mr. Tribby say was the amount of that first deed of trust?

Mr. BOYD: Objected to as leading and further the question was interposed before the witness had finished her answer to the preceding question.

A. \$4700. Mr. Tribby said.

Q. Mr. Tribby said what? A. He said it was \$4700.

Q. Then later what did he say about this deed of trust, if anything?

Mr. BOYD: Objected to as leading.

WITNESS: You mean the amount?

A. Yes. What did he say with respect to the deed of trust?

Mr. BOYD: Objected to as leading.

A. He said it wasn't the amount he thought at first. My mother said she had told him what the mortgage was.

111 Mr. BOYD: The question is further objected to and the answer is moved to be stricken out because no time is fixed at which the conversation is alleged to have taken place.

Q. About how long after this agreement to pay \$300. did you call and he refused to pay the \$300.?

Mr. BOYD: Objected to as leading and further reason that the counsel states as a fact something that has not been proved.

A. I suppose it was about a week or ten days.

Q. How much, if anything, did Mr. Tribby offer to pay? A. You mean after he paid the——

Q. No, I mean on the \$300. How much, if anything, did he offer to pay?

Mr. BOYD: Question objected to as leading. In fact the question has already been asked and answered. Further no time has been fixed.

A. He offered to pay the \$120. which he paid and \$82. more.

Q. Did you or your mother accept the \$82.? A. No, we did not.

Q. Why? A. Because it wasn't what we agreed upon, it wasn't \$300.

Q. What then did he do, if anything? A. Then he offered to pay a little more.

Q. Do you know what that amount was? A. He said he would pay \$110. I think it was.

112 Q. Did you or your mother accept that? A. No.

Q. And why? A. Because it wasn't what he first agreed upon.

Q. State whether or not you know who was present when Mr. Tribby agreed to pay \$300. for your equity?

Mr. BOYD: Objected to as leading.

A. My mother and myself.

Q. Was anyone else present? A. No, sir.

Q. There has been offered in evidence by the complainant, a receipt purporting to be for \$50. which was signed by you and your mother. On the right hand corner of the receipt are the figures 5, 3 and two naughts preceded by a dollar mark, I want to know if you know if that was on the receipt when you signed it? A. No, it wasn't.

Q. I want to know, Mrs. Talty, whether or not you ever agreed to accept anything less from Mr. Tribby than the amount of \$300.?

Mr. BROWN: Objected to as leading.

A. No.

Cross-examination.

By Mr. BROWN:

Q. Mrs. Talty, you have testified in relation to a certain receipt for \$50. that was offered in evidence by the complainant's counsel, do you remember how that receipt reads? A. No, I don't exactly.

113 Q. Can you state anything that is on that receipt from your recollection? A. No, I don't think I could.

Q. Do you remember if the fifty dollars is written out or whether it is in figures? A. No, I don't.

Q. Do you remember whether you signed the receipt first, or whether your mother signed first? A. My mother signed it first.

Q. Did you sign above your mother's name or below? A. Below, I think.

Q. I understand you to say that you signed below your mother's name? A. I think so.

Q. Are you sure about that? A. I said I think so.

114 & 115 Q. What was stated in the receipt as the consideration for the sale? A. There wasn't any \$5300. There wasn't any consideration on there, that \$5300. was put on afterwards.

Mr. BALDERSTON: I suggest to counsel on the other side that they could expedite this proceeding greatly by producing the receipt, which no doubt they can get by calling upon or sending to Mr. Marshall, who is on the floor below in this building.

Mr. BOYD: Do I understand, Mr. Balderston, that you want to compel us to produce evidence for you and at your hearing?

Mr. BALDERSTON My suggestion just made seems to be perfectly clear.

Mr. BOYD: The Examiner will note that the exhibits are not in the possession of the complainant, nor his counsel but in the possession of an Examiner of the Court, and complainant has already signified several times on the record that he has no objection to their production.

Q. Mrs. Talty, is there anything on this receipt for \$50.
116 that shows the consideration, answer yes, or no? A. I don't know.

Q. Do you remember whether the receipt says anything about when this property was to be conveyed by you to Mr. Tribby? A. No, I do not.

Q. Do you remember anything about the receipt at all, answer yes or no? A. I do not remember much about it.

Q. When you called with your mother, Mrs. Beverly, upon Mr. Tribby on or about the 5th day of October, 1904 who conducted your side of the talking, Mrs. Beverley, or yourself, that is to say did your mother make the dicker with Mr. Tribby, or did you make the dicker with him? A. Mr. Tribby told her what he would give and she told him she would take a day to think it over, then she asked me if I thought it was a good price or a fair price and I told her yes. Then she told Mr. Tribby she would accept \$300. less the taxes.

Q. Isn't it a fact that you didn't pay much attention to the negotiations for the property, that you were not very much interested in it? A. No, I listened to them. I was right in the room all the time.

Q. Didn't you state on direct examination that you didn't pay much attention to what Mr. Tribby and Mr. Beverly said about the first trust, that you were not very much interested in it? A.
117 I didn't say that, I said I never had occasion to know the exact amount of the first trust because it wasn't my property.

Q. Didn't you state on direct examination that the reason you were doubtful of the amount of the first trust was that you were not paying much attention to what was going on, didn't you make that statement on direct examination? A. No.

Q. Is that your answer? A. No, I didn't say that.

Q. Mrs. Talty, when you and your mother were talking to Mr. Tribby about selling the property didn't your mother make this statement to Mr. Tribby, "I think I ought to get about \$300. out of this property because I have some obligations to settle up and I want to know, Mr. Tribby, if I am to get \$300.? Didn't your mother make that statement to Mr. Tribby on October 5th? A. I don't remember her making it.

Q. Is Mrs. Beverly, one of the defendants in this case, your mother? A. Yes.

Q. Isn't it a fact that when you were having these negotiations, October 5th at Mr. Tribby's office in regard to this property that your mother asked him how much cash she would receive and that he said "I can't say exactly because I have not figured the various

118 items up that are to come out of the purchase price of \$5300." Didn't he say that, or words to that effect? A. No, he said he couldn't tell exactly because he didn't know what the taxes would come to but whatever it was it would come very close to \$300.

Q. Were you present when Mrs. Beverly, your mother stated to Mr. Tribby that she had been offered \$5400. for this property in controversy? A. Yes.

Q. Did your mother make the statement to Mr. Tribby that she had been offered \$5400. by Mr. Simpson? A. Yes, sir.

Q. What was the date when she made this statement? A. I don't remember the date.

Q. Was it the afternoon that you signed the second trust on that property? A. I don't remember.

Q. You don't remember many of the details of this transaction, do you? A. I don't remember much about dates, I didn't have any special reason to take them down, I didn't know there was going to be all this trouble.

Q. After you and your mother arrived at an agreement with Mr. Tribby as to the amount you were to receive for your equity in the property, state what your understanding was as to what was to be deducted from the purchase price, \$5300.? A. There never was any purchase price of \$5300. Mr. Tribby was to pay her \$300 less the taxes and both mortgages and for recording deeds and all expenses.

119 Q. State how you expected Mr. Tribby to pay a first trust of \$4750. and a second trust of \$306. and the taxes out of \$300.? A. He wasn't to pay that out of \$300. He was to pay the mortgages himself and give her the \$300. with the taxes coming out of her \$300.

Q. You and your mother had been endeavoring to sell this property for some time had you not? A. No, sir.

Q. Isn't it a fact that you had offered this property for sale through Moore and Hill, a real estate firm? A. Not until Mr. Simpson made his offer.

Q. How did Mr. Simpson come to make this offer? A. He asked my mother if she were willing to sell, or did she want to sell. She said "Yes" if she got a fair price.

Q. When did he ask her that? A. I don't remember.

Q. When he asked her, were you present? A. No.

Q. Isn't it a fact that you had been negotiating with Atwell and Treadwell, Moore and Hill and other real estate firms for the sale of this property? A. No, sir.

Q. Had your mother been negotiating?

Mr. BALDERSTON: I object to all this line of questioning as not responsive to the direct examination and irrelevant and immaterial.

120 Q. After you had arrived at an agreement with Mr. Tribby to sell the property did you tell anyone that you had sold the property to Mr. Tribby, and if so, to whom did you make that statement? A. I never told anybody.

Q. You never told anybody? A. No.

Q. You never discussed the sale of this property with anybody since October 5th, until the present time? A. Not that I remember.

Q. You haven't even discussed it with your counsel?

Mr. BALDERSTON: I object to all of this line of cross examination for the reason already stated, and to all similar questions.

A. I never discussed the sale with anybody as far as I remember.

Q. Was this offer made by Mr. Simpson to you and your mother, made upon his own behalf, that is to say, did Mr. Simpson himself want to buy the property? A. I don't know.

Q. He voluntarily made the offer to your mother, did he, as I understand she didn't have the property for sale at that time, is that correct? A. She didn't put it in anyone's hands or hadn't advertised it.

Q. She was trying to sell it wasn't she? A. Not so far as I know, she wasn't.

Q. Do you know Mr. Daniel of the firm of Willige, Gibbs
121 and Daniel? A. Yes, sir.

Q. How long have you known him? A. I don't remember, about a month or six weeks.

Q. Had you ever met him prior to October 5th, 1904?

Mr. BALDERSTON: I object again to this line of cross examination and all similar questions.

A. No, I hadn't.

Q. When did you first meet him? A. I don't know the date.

Q. Was it after you had these negotiations with Mr. Tribby for the sale of the property? A. I don't remember.

Q. State where you first met Mr. Daniel? A. At his office.

Q. How did you come to go to his office?

Mr. BALDERSTON: I object to the question.

A. Why I went down to see about some rents that he was collecting?

Q. For you? A. Yes.

Q. For what property? A. Second street.

Q. Is he your agent for your Second Street property? A. Yes, sir.

Q. How long has he been your agent? A. About two months, I reckon.

122 Q. Who made the arrangement with him? A. My mother and myself.

Q. Did he become your agent for the Second Street property before you had this dealing with Mr. Tribby? A. I don't remember, I think it was before.

Q. Haven't you just stated in answer to one of my questions that you didn't know him, hadn't met him prior to your dealings with Mr. Tribby. A. No, I said I met him when I went down to his office. The rents had been transferred for him to collect.

Q. You stated on cross examination that you had never met Mr. Daniel prior to October 5th, 1904, and subsequently you stated on cross examination that you had met him prior to your dealings with Mr. Tribby, which statement is correct?

Mr. BALDERSTON: I object to the question because it misconstrues or mis-states the answer of the witness.

Q. Which answer is correct? A. I didn't say that. I said I never met him until I went to his office and I didn't remember the date. I never said anything about Mr. Tribby, whether it was before or afterwards.

Q. Did you not state on cross examination that you had never met Mr. Daniel prior to October 5th, 1904? A. I said I met him at his office a month ago or two months ago, I don't remember which.

123 Mr. BROWN: I move to strike the answer out.

Q. Did you or did you not testify a few moments ago that you had never met Mr. Daniel prior to October 5th, 1904?

Mr. BALDERSTON: Question objected to, the testimony speaks for itself.

A. I said I met him a month or two months ago, I don't remember which.

Q. Who was the agent for your property before you engaged Mr. Daniel? A. Moore and Hill.

Q. Did you make this change in agents before you gave this trust to Mr. Tribby or afterwards?

Mr. BALDERSTON: Objected to as irrelevant, immaterial and not in line with the examination in chief.

A. I don't remember whether it was before or after.

Q. Did you not, as a matter of fact, tell Mr. Tribby that Moore and Hill were the agents for one of the flats and Atwell and Treadwell were the agents for the other flat and they had the leases, and that we had to go up there and get them? A. Moore and Hill rented one flat and Atwell and Treadwell one. I mean the same house, each rented a flat.

Q. Isn't it a fact that you didn't change agents from Moore and Hill to Willge, Gibbs and Daniel, until after Mr. Tribby had obtained from Moore and Hill the lease for the Georgetown flat? A.

I don't remember.

124 Q. The first time that you called at the office of Willge, Gibbs and Daniel who did you see there? A. I saw Mr. Daniel, I think it was.

Q. Did you state to him at that time that you and your mother had sold your Georgetown property to Mr. Tribby? A. No, I did not.

Q. Did your mother?

Mr. BALDERSTON: I object to what the mother stated; the mother was not present.

Q. Were you present with your mother at the time she was in Mr. Daniel's office? A. No.

Q. Where did you go? A. I didn't go down there with her every time she went.

Q. I am talking about the first time you called. You testified on cross examination of a few moments ago that the first time you called on Mr. Daniel, it was in relation to the rents of your property on Second Street and that you called in company with your mother, Mrs. Beverly; now I ask you to state whether or not, on the occasion of your first visit, were you and your mother both present during the entire interview with Mr. Daniel? A. Yes, we were present.

Q. Didn't your mother state to Mr. Daniel at that interview that she had sold her property on O Street in Georgetown to Mr. Tribby, or that she was negotiating for the sale of that property with Mr. Tribby? A. Not that I remember.

125 Q. Did you call on Mr. Daniel in company with your mother any time subsequent to this first call? A. Yes, I have been there several times.

Q. Did she ever state to him in your presence that she had sold this property, or did she discuss the sale of this property in your presence, with Mr. Daniel? A. No, I don't think she did.

Q. During the many times that you and your mother have called at the office of Mr. Daniel, the matter of Mr. Tribby's controversy with you has never been discussed?

Mr. BALDERSTON: All this line of cross examination is objected to for the reasons already stated.

A. She saw Mr. Daniel alone before I went there. Their arrangements were made before I went there with her.

At the request of counsel for the complainant the question is read to the witness.

Mr. BROWN: Is that correct?

Mr. BALDERSTON: I move that the question be stricken out.

A. It was discussed, the part that he didn't keep up with, his bargain was discussed.

Q. When did you discuss that? A. I don't remember when it was.

Q. Was it before or after the institution of this suit? A. Before.

Q. Was it before or after you signed the conveyance purporting to convey this Georgetown property to the defendant Charles F. Johnson, was it before or after you signed that deed? A. Before.

126 Q. At the time you discussed with Mr. Daniel the fact that you were having some disagreement with Mr. Tribby about this property, didn't Mr. Daniel state that you were not bound to your bargain and that by conveying this property to the defendant Charles F. Johnson you could defeat any right of action that Mr. Tribby might have against you for breach of contract?

Mr. BALDERSTON: I object to the witness testifying to any conver-

sation or anything that Mr. Daniel said, when Mr. Daniel is absent at the hearing.

A. I don't remember his saying that.

Q. Did he say that in substance to you? A. No, I don't think he did.

Q. How does it come, Mrs. Talty, your recollection is very clear on every point that is material to your case and that you either do not remember or have forgotten every other point which is in any way material to the other side, of this case?

Mr. BALDERSTON: Question is objected to because it is imputing to the witness something that is not apparent.

A. A great part of it I don't remember. It wasn't my property, I wasn't interested in the most of it.

Q. Didn't you have an interest in the property? A. Yes, but only when my mother died.

Q. What, if anything, did Mr. Daniel say about that contract with you and your mother?

Mr. BALDERSTON: I object to anything that Mr. Daniel said for the reason already stated, he is not present and it is not admissible.

A. He told my mother she had better see a lawyer if she didn't want to take this \$82. he offered.

127 Q. Did he suggest the name of some attorney?

Mr. BALDERSTON: I object.

A. Not that I know of he didn't.

Q. Did you ever meet the defendant Charles F. Johnson? A. No.

Q. Do you know whether or not your mother has ever meet him? A. No, I do not.

Q. Was he present at Mr. Daniel's office at the time you executed the deed to your Georgetown property to him? A. Not that I know of.

Q. Did you receive anything of value from Mr. Charles F. Johnson?

WITNESS: You mean money?

Mr. BROWN: Yes.

A. The money was paid by Mr. Daniel.

Q. To whom? A. To my mother.

Q. How much? A. \$70.

Q. Did he pay you anything? A. No.

ELIZABETH LAWRENCE TALTY.

Subscribed to before me this 5th day of December, A. D. 1905.

MARGARET M. MURRAY,

Examiner in Chancery.

Whereupon parties adjourned to meet at the same office Wednesday, December 14th, 1904 at 10 o'clock A. M.

128 Whereupon ERNEST H. DANIEL, a witness produced on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. BALDERSTON :

Q. Please state your full name? A. Ernest H. Daniel.

Q. And what is your business? A. I am Secretary of the corporation known as Willige, Gibbs and Daniel.

Q. Will you state whether or not Mrs. Annie Lee Beverley called to see you any time during the month of October, and if so what business relations, if any, you had with her?

Mr. BOYD: Question is objected to because it is leading and because no time is fixed.

129 A. On a certain day in October, the exact date of which I do not recall, Mrs. Annie Lee Beverley called to see me and stated to me that she owned a piece of property known as 3036 O Street N. W. and stated further, that she owned this piece of property in conjunction with her daughter Mrs. Elizabeth Lawrence Talty. She stated that she was extremely anxious to dispose of this property and that she had been told by a business man in Washington to call and see me, and that he had told her that if the property could be sold to an advantage we could do it, referring to the corporation known as Willige, Gibbs and Daniel, because we had sold quite a number of pieces of property of that nature and in the immediate neighborhood. I told her that we probably could dispose of the property for her and I began to inquire into the conditions surrounding it. I found there was a first trust on the property of \$4750, with interest at $4\frac{1}{2}$ % per annum. I found that this piece of property consisted of two flats rented to tenants and paying a good rental value. I told her then that we had customers for such property and for her to call within a few days and I would let her know what offer we could make for the property. She left the office, I consulted the gentleman who is in charge of the fund placed with us for investment. I explained to him the financial condition surrounding the property and he agreed with me that it would be a good buy. We decided to make Mrs. Beverley an offer. Mrs. Beverley called and I informed her that the parties to whom I had referred in the previous meeting with her, had decided——

Mr. BOYD: I object to so much of this answer as is hearsay, and move to strike out what the gentleman thought.

A. (continuing): I told her this gentleman agreed to make an offer——

130 Mr. BOYD: We object to what other people had to say as being hearsay and inadmissible evidence.

Q. What offer, if any, did you make Mrs. Beverley? A. We made her an offer. Do you mean as to the amount?

Q. Yes? A. We made an offer to buy the property——

Mr. BOYD: We object. There is nothing in the pleadings to warrant the testimony.

A. (continuing): and was then informed that she had some negotiations with a Mr. Tribby. Of course I immediately asked her what those negotiations were. She stated that Mr. Tribby had offered to buy the property and pay her \$300 less taxes due on the property at the time of purchase. She had gone to his office prepared to carry out the transaction of disposing of the property on the terms first stated by him, namely \$300. less the amount of approved taxes——

Mr. BOYD: We object to any statement made by Mrs. Beverley, as being purely a self serving declaration, consequently incompetent and inadmissible.

A. (continuing): She stated then she had gone to Mr. Tribby's office prepared to transfer the property on those terms. I have stated that he refused to carry out the offer that he had made.

Mr. BOYD: I move to strike that out, also the latter part of the answer as hearsay.

A. (continuing): I then told her that before we could enter upon any definite negotiations with her——

Mr. BOYD: We object to what the witness told one of the defendants in the case, as irresponsible and hearsay.

131 A. (continuing): She would have to withdraw entirely from the other negotiations, namely that with Mr. Tribby. She then explained to me that there was a second trust on the piece of property in question amounting to \$364.80. Of course I questioned her as to this trust, when it had been placed upon the property etc. and why it was placed there. She said Mr. Tribby had advanced to her certain sums of money amounting to \$306. approximately, and for such loans he had charged her the difference between that sum and \$364. as interest. She then asked my advice as to how to proceed in the matter of clearing herself from these negotiations. I told her as she was being treated in an unusual manner the best thing for her to do would be to consult an attorney and have him protect her interests. I further told her that if, after consulting her attorney, she was advised that they could withdraw from these negotiations legally I would be glad to take up the matter of the disposal of her property. Thereupon she left my office and consulted an attorney. Sometime after this Mrs. Beverly, accompanied by her attorney called at my office and informed me that they had withdrawn from any negotiations and were now prepared to sell the property. In the name of our customer we made a deposit on the property, had the title examined, prepared and had a deed signed, transferring the property to the representative of the fund in our office for investment.

Mr. BOYD: Counsel for the complainant move to strike out the foregoing answer for the reason that it is all either hearsay or self serving interest.

132 Q. How much, if anything, did you, or the purchaser of the property pay as a deposit to Mrs. Beverly or to Mrs. Talty?

Mr. BOYD: Question objected to because it is leading, secondly no allegations in the pleadings warrant such a question.

A. I paid \$100. as a deposit and some additional amount afterward as an advance.

Q. You paid that deposit on what is known as lot 115 in square 1242—

Mr. BOYD: Objected to as leading.

Q. (continuing): Which was at that time owned by Mrs. Beverly and Mrs. Talty? A. Of course it is understood when I was paying these amounts it was in the interest of my client, not money of my own.

Q. It was on account of the property though, was it not? A. Yes.

Q. In paragraph — of the complainant's bill filed herein it states that the defendants Beverly and Talty conspired and confederated together with one Charles F. Johnson to defraud the complainant of all of his interest and right, in and concerning the said real estate, state whether or not there was any collusion between any of these defendants?

Mr. BOYD: Mr. Balderston I want to know whether that language you gave from the bill, or you claimed to have read from the bill?

Mr. BALDERSTON: My question is in substance what is contained in paragraph 8 of the bill.

133 Mr. BOYD: I request you to read the language from which you derive any such conclusion.

Mr. BALDERSTON: It will be shown by paragraph 8 that the complainant charges that these defendants combined and confederated together to defraud him. That was my question to this witness, and as he transacted the business between all of these defendants in reference to the property he is in a position to be able to testify as to that fact.

Mr. BOYD: We object to the question because there is no such statement in paragraph 8 of complainant's bill or any paragraph or part of said bill, in which such a charge is made as Mr. Balderston states is made.

A. There was absolutely no collusion between Mrs. Beverly and Mr. Johnson, or any other of the parties so far as I know.

Mr. BROWN: The question is further objected to for the reason that it calls for a conclusion of the witness and we move to strike out the question and answer for that reason and for a further reason that the witness' testimony is purely hearsay.

Q. Was the purchase of this property a *bona fide* transaction?

Mr. BOYD: Objected to as being leading and secondly it is asking

for an opinion and conclusion of law and not of facts, the latter being the only thing to which the witness may testify.

A. Absolutely *bona fide* in every way. I would like to state in this connection that I conducted the negotiations concerning
134 the transfer of this property from Mrs. Beverly and Mrs. Talty to Mr. Johnson and prepared all the papers in the case necessary to the transfer.

Cross-examination.

By Mr. BOYD:

Q. You say you are Secretary of the corporation known as Wil-
lige, Gibbs and Daniel? A. I am.

Q. How long have you known the defendant Beverly? A. I have known Mrs. Beverly since about April of the present year.

Q. How long have you known Mrs. Talty another defendant?
A. Well, I have known whom Mrs. Talty was because I saw her in my office about April of the present year, but I can't say that I know her except by sight. All my business was with Mrs. Beverly.

Q. Then you would say you have known both Mrs. Beverly and Mrs. Talty since April? A. I would say that if you will define the word as knowing by sight. I can't say that I have spoken to Mrs. Talty or that she has spoken to me, but I did speak to Mrs. Beverly and she to me, in April, and from that time on.

Q. Where did you meet them? A. In my office.

Q. In April of what year? A. 1904.

135 Q. For what purpose did they call at your office? A. Mrs. Beverly called at my office for the purpose of disposing of some property she owned in this City.

Q. You knew Mrs. Talty was Mrs. Beverly's daughter? A. I had heard that she was, I didn't know it.

Q. That was your understanding? A. That was my understanding, yes.

Q. So, since April 1904 they may be considered as having been clients of your office? A. Mrs. Beverly. I wouldn't like to say that about Mrs. Talty.

Q. When did you have your first dealings with Mrs. Talty? A. The first dealings between Mrs. Talty and myself were about October of the present year.

Q. Do you know what part of October? A. I wouldn't like to say definitely for the reason that we have a great number of clients coming in every day and it is impossible for me to remember just the date or the part even of the month they came in and out, I can't say. But it was during October, the time either shortly before or shortly after the negotiations began for the sale of this property.

Q. You say in April the mother called at your office in reference to another piece of property? A. Yes.

136 Q. Was the daughter interested in that piece? A. I think she was, I can't state definitely about that.

Q. But your impression is that she was? A. Yes.

Q. How long have you known the other defendant, Charles F. Johnson? A. Approximately two years.

Q. Has he or not ever been employed by your firm? A. He was employed by our firm.

Q. Is he employed now? A. He holds an office in our corporation.

Q. What office? A. Treasurer.

Q. How long has he held that position? A. I think since about May of the present year.

Q. May of the present year? A. Yes.

Q. But he has been connected with the firm for about two years approximately? A. Approximately. Something over a year and a half.

Q. Has he been there regularly attending to business at the office with your firm during all that time? A. No, since about June of the present year he has not been in attendance at our office at all.

Q. He has not been there at all? A. No.

137 Q. Is he in the City? A. He is now at his home confined to his bed.

Q. In Washington D. C.? A. In Washington D. C.

Q. Has he been in the District continuously since May 1904? A. No, he is troubled with a pulmonary disease, consumption I think you call it and in the endeavor to rid himself of this complaint he has from time to time visited places known to be beneficial.

Q. Would you name some of those places? A. Some place in the Catskill mountains and I think he went from there—He took a trip to South Carolina, at least he told me he expected to go there and stay two or three days to see if he received any benefit therefrom, and I believe he had just returned from this place when Mr. Brown called on me. That is all I know about it.

Q. Since May he has been out of the District a considerable portion of the time? A. Yes.

■ Q. About how much of the time would you say he has been here in the District since May? A. Well, anything I might say in answer to that question would be a guess, because I saw very little of him and heard very little about him.

Q. But it is your impression that he was going around from place to place outside of the District for a time? A. Yes, sir, outside of the District.

138 Q. Mr. Daniel you spoke about Mrs. Beverly and Talty calling on you in reference to the property and asking you to sell it for them, they called as I understand the same as any other client would to see about the property in your hands for sale? A. Yes.

Q. What commission do you ordinarily get for a sale? A. 3% is the commission.

Q. And you of course, were to get the usual commission?

Mr. BALDERSTON: Question objected to as immaterial, irrelevant and not responsive to the direct examination.

A. We were to get our usual profit from this sale.

Q. In your direct examination you stated that at the time you had your first interview with Talty and Beverly in reference to placing this property in your hands for disposal they told you they were having some dealings with Mr. Tribby,—did you or not call on Mr. Tribby to ascertain from him the nature of those dealings?

A. I did not.

Q. You further stated that you told them they were being treated in an unusual manner by Mr. Tribby? A. I did.

Q. That is based upon statements of Beverly and Talty to you?

A. Yes.

139 Q. As I understand you didn't interview Mr. Tribby at no time have you interviewed him as to his rights in the claim to this property? A. Mrs. Beverly placed the property with me for sale and I didn't know Mr. Tribby in the transaction in any way.

Q. And not knowing him you didn't call on him or make any inquiry? A. No. I know that if he had any claim against the property it would appear of record at the time of the examination of the title.

Q. You are engaged in the real estate business? A. I am.

Q. You have had considerable experience in real estate matters? A. I have.

Q. Have you or not personally made contracts for the purchase and sale of real estate? A. I don't understand the question. Do you refer to me as officially in this capacity?

Q. I don't care in what capacity what I want to know is whether you personally, either for yourself or for others have entered into contracts for the purchase or sale of real estate? A. My business consists entirely of conducting negotiations between a prospective seller and purchaser of any given property arranging details of sale, preparing papers necessary in the case, etc. I give both seller and buyer the best advice I have but my actions in such premises are only those of a broker. The buyer and seller are both called
140 upon to use ordinary care and judgment in either buying or selling property.

Q. When these parties that you bring together, a prospective purchaser or prospective seller, when they reach an agreement is it customary in your office or in the real estate business to consummate that deal at once, that is the deed be made, signed and delivered at once?

Mr. BALDERSTON: I object to the question as irrelevant and immaterial.

A. That depends entirely upon the conditions surrounding the case.

Q. Is it ordinarily the custom? A. Sometimes it is done. It depends upon the condition of things.

Q. As a matter of fact Mr. Daniel don't you know that in almost every case the parties have their preliminary negotiations reach an agreement as to price and conditions of sale and then the title is examined and the necessary papers prepared, signed, executed and delivered at the time the deal is finally consummated?

Mr. BALDERSTON: Question is objected to on the ground already stated, it is immaterial, irrelevant and not responsive to the direct examination.

A. As I stated in my previous answer it depends entirely upon the conditions surrounding the negotiation. Sometimes that is done and sometimes it is not.

Q. Then that is sometimes done, both in your office and other offices? A. I can testify as to my own.

Q. You have advertised through other offices? A. Yes, frequently.

141 Q. Have you had any transaction of that sort with other offices? A. Yes, sir.

Q. As a matter of fact is it not customary where a broker, as yourself, enters into a contract either to buy or sell property with a broker, to sign a contract before either buying or selling, subject to ratification by the owner of the property?

Mr. BALDERSTON: I object to the question for the same reason the previous question was objected to and in order not to encumber the record I object to all other questions of this kind and character for the above reason.

A. Brokers frequently sign a receipt for money subject to the approval of the owner.

Q. They frequently do? A. Yes, they frequently do.

Q. When that is done is that receipt put of record? A. I think it is sometimes.

Q. Is it customary for that receipt to be signed and acknowledged before a notary public? A. I think not.

Q. Did you ever know of an instance in which it was done?

A. I do not recall a specific instance just now, I am of the impression that it has been done within my knowledge.

Q. Have you ever known of an instance when one of these
142 receipts were put of record? A. As I said before I do not recall a specific instance.

Q. In your direct examination you spoke to the effect that if Mr. Tribby knew he had any rights as to this property it would be of record, you meant the land records of the District, did you not?

A. Yes, in making that statement I had in mind the fact that Mr. Tribby had refused to carry out his contract and had offered to substitute a new condition entirely in the matter of payment, refusing to carry out the agreement he had first made. I felt that any business man who thought that he had a good claim against such a piece of property, which the owner refused to transfer to him and he had performed his proper part of the agreement——

Mr. BOYD: I object to the witness stating what he thought, I am asking only for facts.

A. (Continuing): That Mr. Tribby would then have proceeded to have his claim against the property made of record as a notice to all innocent parties.

Q. Mr. Daniel, don't you know it to be a fact that no paper can

be recorded among the Land Records of the District unless it has been signed and executed before a Notary Public?

Mr. BALDERSTON: Question objected to as irrelevant and immaterial.

A. I am not informed on that particular point but it is my understanding that any man who has a claim——

Mr. BOYD: Never mind about that.

143 A. (Continuing:) against the property he would file his claim to have it appear of record.

Q. A moment ago you stated that you knew Mr. Tribby had declined to perform his part of the contract entered into between him and the defendants Beverly and Talty. You knew this only from their statement to you? A. Mrs. Beverly and Mrs. Talty were extremely anxious to dispose of the property to Mr. Tribby at the figure he had agreed upon and they asked me what to do about it as he had refused to pay the agreed upon amount. They both concurred in this statement that he has refused to carry out his agreement.

Q. That is the only information you had on the subject? A. That is the information I had.

Q. I believe you stated you didn't call upon Mr. Tribby? A. I didn't call.

Q. Did you not advise your client that Mr. Tribby had some negotiation with them? A. You mean did I advise Mr. Johnson?

Q. You haven't stated whom your client is? A. I did not because I regarded this matter of negotiation——

Mr. BOYD: Never mind what you regarded this matter as.

A. (Continuing:) Between Mr. Tribby and Mrs. Beverly as a matter entirely between them.

144 Q. What has the treasurer of your corporation to do with paying out moneys, drawing of checks and so on, anything?

A. Until Mr. Johnson left us in June to go away for the benefit of his health it was the duty of the treasurer to draw all checks. Since that time this duty has been made a part of the official duty of the Secretary.

Q. That, of course, would appear upon the official minutes of the corporation? A. Yes.

Q. The funds placed in the hands of your corporation for investment, that fact of course will appear upon the books of the company? A. Yes.

Q. That also discloses the owner of the funds? A. The owner of the fund.

Q. And the purpose of it?

Mr. BALDERSTON: All this line of examination is objected to as not being responsive to the direct examination and irrelevant and immaterial.

A. It would show to the credit of the owner of the fund. The day book would probably state the purpose of the fund.

Q. I assume of course, you have a book keeper who keeps books up to date?

Mr. BALDERSTON: Same objection.

A. Yes.

Q. When an investment is made with a fund of that character the books will also show?

Mr. BALDERSTON: I object to that question as immaterial and irrelevant.

145 A. Yes.

Q. At what stage of the proceedings—what will first appear on the books?

Mr. BALDERSTON: I object to this question for the reason I objected to the previous questions, to wit, it is not responsive to the direct examination and immaterial and irrelevant.

A. There would appear against the owner of the fund a charge for the amount deposited to the credit of Mrs. Beverly. I mean by deposit, she would be credited with that amount so that any time she could draw against it.

Q. And the client's fund would of course be charged against that fund?

Mr. BALDERSTON: The question is objected to as immaterial and irrelevant.

A. Yes.

Q. Who is your book keeper? A. Miss Hosier.

Q. How long has she been with you? A. I think about the time Mr. Johnson left, I am not certain. But his leaving made it necessary to have a book keeper.

Q. You stated in your direct examination that \$100. had been paid as deposit on account of the purchase price of this property by your client? A. The amount paid was more than \$100. but just how much was advanced I have forgotten. I don't remember those little matters, they do not come under my observation.

Q. The books will show? A. Yes, the books will show.

146 Q. Just simply the deposit? A. More than \$100.

Q. Up to this time nothing further than the deposit, of which the exact amount you do not know, has been paid? A. I did not say that. The deposit was \$100. A greater amount than the deposit has been paid, just what that is I do not know but the books will show.

Q. When was this greater amount paid if you know Mr. Daniel, that is the amount over and above the \$100? A. Upon the completion of sale.

Q. You have already stated that you now perform the duties of treasurer consequently you drew the checks yourself? A. The checks were signed by me.

Q. How much additional has been paid \$50. or \$100. just approximately? A. I wouldn't like to state that, I really don't know.

Q. Who is the attorney for your corporation?

Mr. BALDERSTON: I object to that question.

A. The corporation's attorney is Walter C. Balderston.

Q. Who is counsel of record in this case for the defendants? A. Yes.

Q. As a matter of fact he was recommended by you to Mrs. Beverly and Talty?

Mr. BALDERSTON: Question objected to as irrelevant and immaterial.

147 A. Yes.

Q. When the statement was made to you by Beverly and Talty that they were having some negotiations with Mr. Tribby and you stated to them that they had better see an attorney it was at that time you recommended Mr. Balderston?

Mr. BALDERSTON: I object to that question as stating something that does not appear from the evidence.

Q. (Continuing:) At or about that time? A. When Mrs. Beverly stated to me that Mr. Tribby refused to carry out his agreement I told her that she had better see an Attorney in order that her interests might be properly protected. She stated to me that she didn't know any attorneys and asked me to name one whom I thought could be intrusted with her case. I therefore named Mr. Balderston.

Q. About what time was that? A. I think that was the time of our second interview.

Q. Can you fix the date? A. Sometime in October.

Q. Prior to the making of the deed? A. Prior to that.

Q. About how long prior? A. That would be a guess. I think several days, probably a week, I don't know exactly.

Q. Whatspace of time did the negotiations for the sale of this property cover, as near as you can recollect them? A. The time
148 consumed after we had agreed upon a price was about the time necessary to have the title examined. As soon as the examination by the title Company had been reported to us we then proceeded to close the sale. Just the exact amount of time I cannot state.

Q. What time is ordinarily consumed in examining a title? A. That depends entirely upon the amount of examination necessary. In this case the examination was very short.

Q. Who made the examination? A. The District Title Insurance Company.

Q. And you don't know exactly how much time they consumed in making the examination? A. I could not state that exactly.

Q. How soon after the agreement was it that you put it in the District Title Insurance Company for examination? A. Our usual custom is to place it immediately in the hands of the title Company

and I presume that immediately upon the signing of the deposit slip, it was placed in their hands.

Q. At that time the deposit of \$100. was made? A. Yes, I think so.

Q. In other words, the \$100. deposit was made before you put it into the hands of the title company for examination? A. Ordinarily when——

Mr. BOYD: Never mind about stating what is ordinarily done.

149 Mr. BALDERSTON: Let the witness finish his answer.

A. (Continuing:) Ordinarily when a purchaser signs a deposit slip he places with us a certain sum of money named in that deposit slip. This amount we usually hold. In this case \$100. was immediately transferred from the fund we have for investment to Mrs. Beverly's account. Now whether she drew that amount or not immediately, I cannot state, but the books will show.

Q. But that, of course, would have to be done before the matter was put in the hands of the District Title Insurance Company for examination? A. Yes, it would be before, but it might be upon the same day.

Q. She signed the receipt of course? A. She signed the receipt.

Q. And also the agreement? A. There was no other agreement.

Q. The receipt which embodies the agreement? A. Yes.

Q. And you have that at your office? A. We have that at our office.

Q. You haven't it with you? A. I haven't it with me.

Q. Will you kindly produce it at the next session of testimony? A. I will.

Q. Do you know when this fund was placed in your possession out of which you claim this purchase was made?

Mr. BALDERSTON: I object to the question on the ground that is irrelevant and immaterial.

150 A. I think that was placed with us along about March of the present year. I might be mistaken about that date, it might have been in April.

Q. The receipt which Talty and Beverly signed was it signed by both of them? A. I think so.

Q. That stated the amount they were to receive? A. Yes, sir.

Q. How much were they to receive?

Mr. BALDERSTON: Question objected to as irrelevant and immaterial.

A. \$5450.

Q. That also shows the real purchaser, in other words the owner of the fund with which you claim this property was being purchased?

Mr. BALDERSTON: I object to the question on the ground that the previous objections were made.

A. I think so.

Q. And what is his name? A. Charles F. Johnson.

Q. You mean Charles F. Johnson, of course, one of the defendants in this suit? A. Yes, sir. He controls——

Mr. BOYD: Just answer my question. I object to any further statements being made. They cannot possibly be responsive to the question.

Mr. BALDERSTON: Go ahead and finish your answer.

151 A. (Continuing:) He controls in conjunction with Mr. J. Lewis Willige, a fund for investment and property purchased for that fund has always been placed in the name of Charles F. Johnson.

Q. Then Mr. Daniel you mean that Mr. Charles F. Johnson is not the owner of this fund? A. Mr. Charles F. Johnson is one of the owners of this fund.

Q. Does he own it in his own right or as trustee? A. Mr. Charles F. Johnson, as in conjunction with Mr. Willige has control of this fund for investment purposes and it is by them placed with our office for investment.

Q. Do you know whether or not Mr. Johnson has any personal interest or ownership in the funds to which you refer? A. I can only give an opinion on that. My opinion is that he has so stated to me that he is part owner of this fund.

Q. Did he state who the owner was, whether it was Mr. Willige? A. Both Mr. Willige and Mr. Johnson have stated to me that that fund is in their hands for investment and that each of them are a part owner.

Q. And, do I understand from that answer, that you have just made, that Mr. Johnson owns one part of it and Mr. Willige owns the other part?

Mr. BALDERSTON: Question objected to as irrelevant and immaterial.

A. I can't state as to that. They didn't make their statements sufficiently definite as to allow me to form an opinion as your question might infer.

152 Q. In whose name does this fund appear as owner on the books of your company?

Mr. BALDERSTON: Question objected to as not responsive to the direct examination. Also immaterial and irrelevant and not admissible.

A. It appears in two names.

Q. What two? A. First that of the Guttenson estate and second that of Charles F. Johnson fund. Money at rest with our company is held and credited to the Guttenson estate. When it is being used for investment purposes of the purchase of property it is transferred to the Charles F. Johnson fund and account.

Q. Do you know who the credited legal representative of the Guttenson estate is?

Mr. BALDERSTON: I object to the question as being irrelevant and immaterial.

A. I don't know that they have any credited representative.

Q. Well, somebody must have legal authority to hold and control this fund? A. You mean trustee, I thought you meant as an attorney.

Q. No I mean as administrator, trustee, guardian or what not. I don't know in what capacity it may be held but it being a fund belonging to an estate it is necessarily held and controlled by some representative of the estate? A. All I know about the matter is this. Mr. Charles F. Johnson and Mr. J. Lewis Willige placed with
153 Guttenson estate, of which they were trustees with power to invest said funds.

Q. The J. Lewis Willige that you refer to is a member of your firm? A. He is president of our corporation.

Q. You have other funds similar to that, haven't you, for investment?

Mr. BALDERSTON: I object to that question as irrelevant and immaterial.

A. From time to time.

Q. You, of course, don't take funds of that sort gratis?

Mr. BALDERSTON: Question is objected to as irrelevant and has no bearing on the case whatever.

A. It is customary among brokers to invest money gratis usually getting their pay from the borrowers or in some other manner. In some instances such as the conditions controlling this Guttenson estate pay or gain does accrue from several sources such as rents, profits on re-selling etc.

Q. So by investing this fund for the Talty and Beverly property you would have made a profit on the fund by reason of this investment?

Mr. BALDERSTON: I object to the question on the same ground, as irrelevant and immaterial.

A. Not necessarily, do you mean from the Guttenson estate?

154 Q. No, I am speaking about the fund by reason of the investment? A. Of course we wouldn't have gone into this transaction if there appeared no profit.

Q. When you purchase a piece of property or enter into an arrangement of that kind at that time you don't know whether the title is good or not, and which might prove upon examination of the deed, so that was the reason you didn't put up the deposit out of your own funds.

Mr. BALDERSTON: Question objected to as irrelevant and immaterial.

A. No we put up the deposit out of the fund of the Guttenson estate but we are protected by the clause in the deposit slip, substantially

as follows: that the title of the above mentioned property shall prove good according to the records or no sale. If the title proves to be invalid or defective the deposit money is immediately credited back to the Guttenson Estate.

Q. Suppose you couldn't get your deposit back?

Mr. BALDERSTON: Same objection.

A. Then in case the money could not be gotten back the Company would be liable for the money that had been paid out.

Q. Was the deposit of \$100. that you actually made in this case charged to the Guttenson fund? A. Yes, sir.

Q. Was that deposit made by check?

Mr. BALDERSTON: Objected to as irrelevant and immaterial.

A. I think it was made by check. In nearly every case it is.

155 Q. To whom was that check made payable?

Mr. BALDERSTON: Object to that question on the same ground that the previous question was objected to.

A. Our Company draws many checks during the day and it is impossible for me to remember exactly how every check is drawn but my opinion is that such a check, if drawn, was payable to the order of Mrs. Annie Lee Beverly.

Q. Just to one and not to both of them?

Mr. BALDERSTON: Same objection.

A. Yes, sir.

Q. And the further advances which you stated you think have been made were probably also made by check?

Mr. BALDERSTON: Same objection as to how checks were made.

A. I think so.

Q. Will you, Mr. Daniel, kindly look up the matter and produce the checks at the subsequent hearing, of which you will be duly notified?

Mr. BALDERSTON: I object.

A. I will.

Q. Do you remember the amount of this Guttenson fund?

Mr. BALDERSTON: Object to the question as being irrelevant and immaterial.

A. At the present time?

Q. No, when originally placed with you, I believe you stated that was about March 1904? A. There have been various amounts placed with us to the credit of the Guttenson, running as high as \$5000. I think approximately \$5000. anyway.

156 Q. These sums have been placed with you at different times then?

Mr. BALDERSTON: Question objected to as irrelevant and immaterial.

A. At different times.

Q. The first one however, being about March 1904?

Mr. BALDERSTON: I object to the question as to the amount of the fund and when it was placed with the witness.

A. The first one for investment was about that time, I think, although the Guttenson estate have had amounts of money with us for more than a year.

Q. Have you or not ever purchased any other property than this with that fund? A. On several occasions properties have been purchased for the Guttenson Estate.

Q. Through your office and out of this fund? A. Through our office and out of this fund.

Q. Now, what properties?

Mr. BALDERSTON: I object to the question as to what properties were purchased as it is immaterial and irrelevant, it makes no difference what properties were purchased, it has nothing whatever to do with this case.

A. I can't recall them all, but will name 1754 Seaton Street N. W.

Q. In whose name was that taken? A. Charles F. Johnson.

Q. In his individual capacity? A. In his own name.

157 Q. When was that? A. I think that was along in April, shortly after a fund was placed with us, that property was purchased.

Q. Does that still stand in his name? A. I think it is, yes.

Q. Have you anything on your records there showing how he holds that property, any declaration of trust or deed, or any other entry showing in which capacity he holds it?

Mr. BALDERSTON: Question objected to as being immaterial.

A. Yes, I think we have a deed transferring the property to him.

Q. No, no, you don't appear to understand my question. Have you any declaration of trust, or deed or anything with his name on it showing that he holds it as trustee for somebody else? A. I don't know that we have.

Q. And you think it still stands in his name on the records? A. I think it still stands in his name on the records.

Q. Well, what other property has been purchased for the Guttenson estate out of that fund? A. 3019 Dumbarton Avenue.

Q. When was that purchased? A. I can't recall the exact date, sometime in September probably.

158 Q. These are in trust, you are speaking of purchasing out and out? A. These are purchases out and out.

Q. And do you know whether or not he has made a deed and declaration of trust in reference to that piece of property showing that he holds it as trustee?

Mr. BALDERSTON: Question is objected to, on the ground that the former question is objected to.

A. As far as I know he has not. The matter of holding these

properties is a question which concerns Mr. Willige and Mr. Johnson as co-trustees and whatever of agreement they may have between them as to their individual responsibilities to each other or to the estate does not come within the range of my knowledge and I cannot testify to it.

Q. In making these purchases it is customary to consult both trustees?

Mr. BALDERSTON: I object to the question as to what is customary.

Q. (Continuing:) As a matter of fact, do they or do they not? A. Previous to the time Mr. Johnson was taken ill and forced to leave the office both trustees were consulted concerning these transactions affecting the funds to the credit of the Guttenson Estate. When Mr. Johnson left the office I heard him say to Mr. Willige one day that he was in such bad shape and everything that necessitates any considerable thought made him so nervous that he preferred not to be bothered with any business matters any more than was absolutely necessary and he requested Mr. Willige to take charge of the
159 Guttenson affairs and use his best judgment concerning any transaction of any character affecting that estate and other matters they were interested in and that he would be satisfied with whatever Mr. Willige did.

Q. When was this? A. Just about the time he left the office.

Q. About June, you stated 1904? A. About June 1904.

Q. These other two pieces of property about which you have spoken were both taken, as I understand, after Mr. Johnson left the office? A. Dumbarton avenue was, the other was not.

Q. Have any other pieces been taken since that? A. 1756 Seaton street N.W. That was taken.

Q. Since Mr. Johnson left the office? A. No, before.

Mr. BALDERSTON: I object to all of this line of cross-examination.

Q. Do you know of any other property having been taken since Mr. Johnson left the office, that is any other than the Dumbarton Avenue piece, any purchase by this Guttenson fund since he left the office? A. I am of the opinion that there has been, yes, No. 3036 O street, the property in question was taken in this manner, in Mr. Johnson's name.

Q. This piece in controversy here that you know of? A. Yes.

Q. Any others? A. As I told you before I cannot recall all the pieces of property that have been taken for the Guttenson
160 Estate in Mr. Johnson's name, and it is impossible that since Mr. Johnson left the office there were other pieces of property besides 3019 Dumbarton avenue and 3036 O street, which I have mentioned, were taken in his name since he left the office.

Q. Do you know whether or not Mr. Johnson was consulted about these two pieces? A. I think Mr. Johnson was not consulted.

Q. He was not consulted about either one of these purchases? A. He may have by Mr. Willige, but not by me. Mr. Willige was the representative of the fund, nearest at hand, and upon his consent and agreement we made the transactions mentioned.

Q. Does Mr. Willige spend a greater portion of his time at your office?

Mr. BALDERSTON: Objected to as irrelevant and immaterial as to whether or not Mr. Willige spends his time at the office.

A. He does not.

Q. He is in the city? A. He is in the city.

Q. In your direct examination you stated, Mr. Daniel that you consulted with the defendants Beverly and Talty in reference to the purchase from them of this property 3036 O Street, conferred with the owner of the fund, with whom did you confer?

Mr. BALDERSTON: Question is objected to as being irrelevant and immaterial.

A. I don't think I said that.

Q. You said that in substance? A. I believe I stated that
161 I consulted with the party controlling the fund, and by this I meant I consulted with Mr. Willige.

Q. Do you know whether or not the Guttenson Estate is the estate of Mr. Johnson's grandfather? A. No, I don't know, I think it is his relatives, but I don't know.

Q. Prior to the time that you made the deposit of \$100 with Mrs. Talty and Mrs. Beverly about which you have spoken is it not a fact that you advanced to them a sum of money either on this property or on some other property, for some purpose or another? A. Well, I can't state as to that. Mrs. Beverley had with us properties for which we collected rents and we probably did pay these rent remittances at various times, whether before or after the time you mentioned I cannot state as we have so many of such things coming on every day it is impossible for me to remember just exactly when these remittances were sent out.

Q. How long have you been agent for her property?

Mr. BALDERSTON: Question is objected to because it has no bearing on the case and it makes no difference how long he has been an agent for her property.

A. Our first agency for her, so far as I know, began about February, March or April, somewhere along there, of the present year.

A. *Our first agency for her, so far as I know, began about February, March or April, somewhere along there, of the present year.*

Q. And of what property or properties?

Mr. BALDERSTON: I object to the question. It makes no difference what properties he was agent for.

162 A. She has had with us various properties from time to time.

Q. Along about October 21, 1904 were you or not the agent for any property or properties belonging to these defendants Beverly and Talty? A. I think we were,

Q. Do you remember what property?

Mr. BALDERSTON: Question objected to.

A. Well, if the sale of this 3036 O Street property hadn't been completed at that time we were agents for it, but if the sale had been completed at that time we were still agents for it but in the name of another owner.

Q. Are you agent for any other property for her? A. Yes.

Q. What? A. No. 810 Second Street, I think is the number, Southeast.

Q. When did you say that was placed with you? A. Along about the same time.

Q. By the same time you mean October 1904? A. Yes.

Q. That was the only property, those two pieces, which you were agents for at that time? A. Yes.

Q. In making remittances of rents to clients they are usually made about the 1st and 15th are they not? A. They are usually made on the day the rent is received, there is no general rule concerning remittances of rents. Sometimes rents are held up for long periods of time to cover respective repairs. Very often we advance sums of money to owners as a convenience to them, often before the rents are collected.

163 Q. Did you or did you not make any collections for Mrs. Talty and Mrs. Beverly or either one of them between October 15 and 21 of any other property whatever?

Mr. BALDERSTON: I object to the question as irrelevant and immaterial.

A. We were collecting rents of premises 810 Second Street S. E. Some of the rents were due on the 15th and other dates varying in the month, and as tenants do not always pay on the date rents are due, I cannot say definitely if the collection of rents were made on 810 Second Street S. E. between the 15th and 21st, but sometime during that month collections of rents were made.

Q. Was there more than one tenant in that Second Street property at that time?

Mr. BALDERSTON: Objected to as irrelevant and immaterial.

A. I think there was.

Q. What is the total amount of rent derived from the building if fully tenanted at that time, October 1904?

Mr. BALDERSTON: Objected to as being irrelevant and immaterial.

A. The total amount of rental which would have come per month from premises 810 Second Street S. E. if the entire premises were occupied and rents promptly paid would have been \$34. per month.

Q. It has been testified in this case that on or about October 21st, 1904 Mr. Balderston as attorney for Beverly and Talty went to the office of Mr. Tribby with a roll of money said to have contained \$120, which he offered to give to Mr. Brown for Mr. Tribby, as a matter of fact did you not furnish that money?

Mr. BALDERSTON: Question objected to as irrelevant and immaterial.

164 WITNESS: Did I furnish the \$120.?

Q. Yes, did you? A. So far as I know I did not.

Q. Did she request you to furnish that money?

Mr. BALDERSTON: I object to the question as irrelevant and immaterial.

A. In testifying that I did not advance this \$120. so far as I knew I meant to state that I did not give it out directly. It is possible that the \$100. deposit may have been paid to her sometime and that she used this amount for that purpose, and that indirectly I did furnish it.

Q. I mean did not your firm furnish \$120. or advance that amount, which Mr. Balderston took to Mr. Tribby's office October 21st, 1904?

Mr. BALDERSTON: Question is objected to for the same reason a former question is objected to.

A. I don't think so.

Q. You knew that that tender was made or going to be made?

A. I knew it was going to be made.

Q. It was talked about in your office? A. I can't state that.

Q. From what source did you learn?

Mr. BALDERSTON: Question objected to on same ground as former question is objected to.

A. I believe that Mrs. Beverly and her attorney called on me——

Q. By her attorney you mean Mr. Balderston? A. Yes, sir, called on me and informed me that they had withdrawn from the
165 negotiation and had tendered to Mr. Tribby or his legal representative the amount of money which he had loaned and just which, Mrs. Beverly or Mr. Balderston, informed me of this matter I am unable to state.

Q. You mean to state that is the first knowledge or information you had as to the tender of that money? A. No, I don't state that is the first knowledge.

Q. What is the first knowledge?

Mr. BALDERSTON: Question objected to for the same reason.

A. I can't state as to the first knowledge I had.

Q. Was it before the alleged tender was made? A. I believe I was told they were to make a tender, but I am not willing to testify that that was certainly the case..

Q. Was it not discussed with you or in your presence as to where the money would be obtained with which to make this tender?

Mr. BALDERSTON: Same objection that the question is immaterial and irrelevant.

A. I think not, I do not remember about that.

Q. If the money had been advanced this \$120. or about that amount had been advanced to these defendants by your firm would you probably have known it?

Mr. BALDERSTON: Question objected to for the same reason the previous questions are objected to.

A. Very probably I would.

Q. Would or would not your books disclose the fact if such an advance had been made or money loaned them for that purpose?

Mr. BALDERSTON: This question is also objected to for the same reason.

166 A. Yes, if any money has been paid out for any purpose, our books will disclose the fact.

Q. Will you kindly examine those books so you can state at the next session? A. I will.

Q. On or about October 21, you called up Mr. Tribby over the telephone, did you not? A. I called him up over the phone probably about that time, I wouldn't state exactly as to the date.

Q. Was it the day on which the deed was recorded, the deed from Beverly and Talty to Charles F. Johnson? A. I think it was, I am not certain as to that.

Q. At that interview over the phone you had some talk with Mr. Tribby then as to his negotiations with Beverly and Talty for the same property that is here in dispute? A. Yes.

Q. It was prior to that time, I understand from your testimony however, that you had knowledge of this negotiation,—you derived knowledge from these defendants Beverly and Talty? A. Prior to Mrs. Beverly informing me Mr. Tribby would not carry out his agreement, yes.

Q. Do you remember the hour and day on which you called Mr. Tribby up over the phone? A. I think in the afternoon some time.

Q. Before the deed was recorded? A. No, after the deed was recorded.

Q. How do you fix that? A. My only object in calling Mr. Tribby up was this fact. The Title Company had reported there was a second trust on the property amounting to \$364.80. I wished

to relieve the property of that second trust by paying the

167 amount and getting a release. I therefore called up Mr. Tribby and asked him if he would release the trust on payment of the amount of money, and I would not have called him up to relieve a second trust unless the title had passed hands and for this fact I know that the deed must have been recorded previous to my telephone message to him.

Q. Now, you mean signed and delivered do you, or recorded? A. Recorded.

Q. The object you had in calling up Mr. Tribby was to ask him if he would take \$364.80 and release that trust? A. believe I asked him what arrangements we could make to release the trust, I do not remember whether I offered him any particular amount or not.

Q. That, of course, is what you you were willing to pay? A. Yes.

Q. As I understand, the reason you were making this request was

this, said second trust was not yet due? A. The second trust was not yet due and the rents were tied up by this second trust and we wanted to secure these rents for the estate.

Redirect examination.

By Mr. BALDERSTON :

Q. Mr. Daniel you testified that in buying property for this estate it was customary that the title to property was purchased in the name of Mr. Johnson, you might state why that is done? A. That was done for convenience in conveyancing Mr. Johnson being
168 a single man.

Q. When did you see Mr. Johnson last, Mr. Daniel? A. This morning.

Q. State what, if anything, you know of his condition? A. I consider Mr. Johnson a very ill man.

Q. Was he in bed when you were there this morning? A. He was in bed.

Q. Unable to get up? A. Unable to get up I think.

ERNEST H. DANIEL.

Subscribed to before me this 11th day of January, A. D. 1905.

MARGARET M. MURRAY,

Examiner in Chancery.

Whereupon WALTER C. BALDERSTON having been first duly sworn, testified as follows:—

My name is Walter C. Balderston, and I am a member of the bar of the District of Columbia. During the month of October Mrs. Beverly called to see me in reference to some business transactions she had had with Charles E. Tribby the complainant in this cause. After she had placed the facts concerning her transaction and her claim before me very fully I had her daughter Mrs. Talty also call to see me, later and after going over the matter thoroughly with her I advised them of their rights in the premises. On Octo-
169 ber 22nd, accompanied by Mrs. Talty, one of the defendants in this case I went to the office of Mr. Tribby and inquired for Mr. Tribby particularly. I was informed by Mr. Brown, the complainant's attorney, and who is now present, that Mr. Tribby was not in—

Mr. BROWN: I object to anything being put on the record as to what Mr. Brown said or anybody else said as hearsay and furthermore it is incompetent to prove agency by the alleged agent himself, either by his testimony or demands.

Witness continuing: He set the time he thought Mr. Tribby would return. I called again at the office a little after the time set by Mr. Brown and was told by Mr. Brown that Mr. Tribby had not yet returned. Not wanting to make any mistake as to who I was transacting business with, and who I ought to transact business with I inquired of Mr. Brown in what capacity he was there. He

stated to me that he was Mr. Tribby's attorney. I understood Mr. Brown was a member of this bar in active practice, and therefore because of that fact and because of his statement to me that he was Mr. Tribby's attorney, I stated to him my business, which I would not have done had not Mr. Brown stated that he was Mr. Tribby's attorney. I produced a notice which has been filed by the complainant in this case as one of his exhibits, the number of the exhibit I do not remember. The exhibit however, I am refused at this sitting by Mr. Marshall who took testimony for complainant. He has also refused to leave it with Mrs. Murray, the examiner who is taking this testimony. I will therefore have to state what the notice contains in lieu of producing the exhibit.

170 Mr. BOYD: Counsel for the complainant are obliged to object to any statement in reference to the exhibit, the exhibit itself being the best evidence and there is a proper method by which it may be produced here if counsel for the defendants will but resort to that method. Furthermore I desire to state on the record that I know of my own knowledge that Mr. Marshall was requested within a few minutes before ten o'clock this morning by Mr. Balderston to be present with all the exhibits which he has in this case. He stated that he had a previous engagement but not desiring to embarrass counsel for the defendant notwithstanding the short notice which had been given him to be present he broke the other engagement to be present at this hearing which was set for 10 o'clock a. m. That he was present at that hour and remained until after 12 o'clock whereupon he stated he was unable to stay longer and departed, taking with him such exhibits and testimony as was taken before him on behalf of the complainant.

Mr. BALDERSTON: In answer to the objection made by counsel for the complainant it makes no difference whether Mr. Marshall had an engagement or not, it made no difference to me whether he was present at this sitting or not and I so informed Mr. Marshall, but that I wanted the exhibits filed with him so I could use them at this hearing. He said he preferred to be present. I said that I had no objection to his being present and it made no difference to me how the exhibits were there but I would like to have them delivered to Mrs. Murray the examiner taking this testimony or have the privilege of using the exhibits when needed by me at this hearing.

171 Mr. BOYD: That there may be no misunderstanding about the matter of these exhibits counsel for complainant desire again to state on the record that they have absolutely nothing to do in any way whatsoever with the controversy which appears to be taking place between Mr. Balderston and Mr. Marshall and that we are perfectly willing that the Exhibits be produced at this or any other hearing in any way whatsoever, or by anybody.

Continuing: After having been told by Mr. Brown that he was Mr. Tribby's attorney I produced the notice above referred to and in order that my statements to Mr. Brown might not be garbled at some future time or any other construction put upon them I read the contents of that notice, which is the said exhibit and did not vary therefrom, and it will be noticed that in that written notice the

reason was stated why the tender was being made, to wit: That Mr. Tribby had declined to keep his agreement and still declined to, and for that reason negotiations were then declared at an end, and I then and there made a tender in cash of \$120. in cash to Mr. Brown the counsel for the complainant. His reply was that "I will refuse to accept that and I will file a bill for specific performance." By this reply, it will be noticed, that he did not refuse the tender because he had no authority but his reply indicated emphatically that he had authority to refuse or to accept, from his answer. He said nothing about not having any authority to accept this, but his attitude was that, that he had authority to act for Mr. Tribby as his attorney in such matters.

Mr. BROWN: Counsel for complainant moves to strike out so much of the witness' testimony that refers to the contents of the paper which has been offered as an exhibit by the complainant in this case for the reason that the paper itself is the best evidence, and further moves to strike out so much of the witness' testimony as refers to what was said by Mr. Brown to him at the time he called at Mr. Tribby's office, for the reason that Mr. Tribby was not present and the testimony is hearsay. Counsel further moves to strike out that portion of the witness' testimony which refers to conclusions of law drawn by the witness from Mr. Balderston's attitude at the time he called at Mr. Tribby's office for the reason that it states what the witness thought and not the facts of the case.

Continuing: I then stated to Mr. Brown that I would leave the notice, which I did leave, also gave him my card, stating that if he wished to confer with me regarding the matter he could do so at any time.

Mr. BROWN: Counsel for the complainant moves to strike out the last portion of witness' testimony for the reason that anything stated to Mr. Brown is irrelevant and immaterial to the issues in this case.

Cross-examination.

By Mr. BROWN:

Q. Mr. Balderston, at the time you called at Mr. Tribby's office and exhibited the roll of bills as you testified, purporting to contain \$120. did you leave any money with Mr. Brown? A. I must state that my testimony covers all that, which shows that Mr. Brown refused to accept the money. Of course it would have been absolutely ridiculous for me to lay \$120. on the desk or anywhere else in the office. I told Mr. Brown however that we were ready and had the money to pay him when he was ready to accept it.

Mr. BROWN: I move to strike out the last portion of the witness' answer as not responsive to the question.

173 Q. As a matter of fact you did not leave any money with him for Mr. Tribby? A. I can only answer as I have heretofore.

Q. From what source did you obtain this \$120. you say you offered to Mr. Brown? A. I refuse to answer the question for several reasons.

Q. What is one of the reasons Mr. Balderston? A. I hardly think it necessary to state on the record but not to be discourteous to counsel I will state first that there is nothing in my testimony in chief that would warrant in asking any such question and any such question would be irrelevant and the answer would be inadmissible if objected to by counsel for the defendants. For further reason that there are many things concerning this matter and the transaction that I would be pleased to disclose but for the fact that my professional relations with these defendants would prevent.

Q. Did you or did you not receive this \$120. or any portion of the same from Mrs. Talty one of the defendants in this case? A. I refuse to answer that question for the reason previously stated.

Q. Did you or did you not receive this money from Mrs. Beverly one of the defendants in this case? A. I repeat the same answer as I gave before.

Q. Did, or did you not receive this money from any member or employee of the firm of Willige, Gibbs and Daniel? A. I repeat the same answer as before.

Mr. BROWN: Counsel for complainant requests the examiner to certify these questions which the witness has refused to answer to court for the purpose of having a rule issued compelling the witness to answer the questions as counsel for the complainant deems that they are entirely proper, and relevant and that the witness should answer the question.

Mr. BALDERSTON: As counsel for Mrs. Beverly and Mrs. Talty the defendants in this cause I demand of counsel for the complainant the notes made by Mrs. Beverly or Mrs. Talty or both.

WALTER C. BALDERSTON.

Subscribed to before me this 11th day of January, A. D. 1904.

MARGARET M. MURRAY,

Examiner in Chancery.

Whereupon Mr. Balderston announces the testimony closed on behalf of the defendants and the parties adjourned.

178 Met, pursuant to the foregoing notice, to take testimony in rebuttal in the above styled cause on behalf of the complainant.

Present: Howard Boyd, Esq., for complainant. W. C. Balderston, Esq., for defendants.

Whereupon, the following proceedings were had:

Mr. BALDERSTON: In pursuance of the request of counsel for the complainant, I as counsel for the defendants produce the contract of sale; also two checks payable to the order of Annie Lee Beverley, one dated October 26th for the sum of seventy dollars, and the other dated October 28th, for the sum of fifty dollars.

Mr. BOYD: At a previous session of our testimony on behalf of the complainant, we introduced in evidence what appear in the record as Complainant's Exhibits No. 7 and No. 9, and I believe also one or two other letters written by Mr. Tribby to the defendants in this cause, and at that time we gave you notice to produce the originals at the next session of our testimony. I desire to know whether or not you have them here in accordance with that notice?

179-181 Mr. BALDERSTON: My clients have not the originals, if there ever were any. They disclaim that they have ever received some of them——

Mr. BOYD: I object, Mr. Balderston, to your stating on the record——

Mr. BALDERSTON: Well, I don't think it is material——

Mr. BOYD (Continuing): The record should simply disclose whether you have or have not these exhibits.

Mr. BALDERSTON: Well, I would like it to go down that way, that they have not the exhibits—that they have none and state so—they disclaim receiving some of them.

Mr. BOYD: In accordance with the notice also given you and your witness, Mr. Daniel, to be present with certain papers, I understand that he has complied. Of course, this will be in the nature of further cross-examination of Mr. Daniel with reference to these papers.

Mr. BALDERSTON: I think not, Mr. Boyd. I object to Mr. Boyd now cross-examining the witness as to these exhibits, but if he wishes to examine the witness he must make him his own witness.

182 Whereupon ERNEST H. DANIEL, a witness heretofore sworn and examined herein, resumed the stand for further examination.

By Mr. BOYD: .

1 Q. Mr. Daniel, I hand you a paper which Mr. Balderston has just given me with the statement that this is the contract for the sale of the property now in dispute, entered into between your firm and the defendants Beverley and Talty. Kindly state whether or not that is the original contract? A. This is the original contract.

183 2 Q. That was made and entered into on the date which it bears, October 22, 1904, was it? A. On that date, or a day or two after. I cannot say that Mrs. Beverley signed it on that date, but the contract was made that day; they either signed it that day or a day or two afterwards.

Mr. BOYD: I offer the contract in evidence, and request that it be copied into the record, and numbered Complainant's Exhibit No. 10.

COPY OF COMPLAINANT'S EXHIBIT No. 10.

" J. Louis Willige, Earnest H. Daniel, Charles F. Johnson,
President. Secretary. Treasurer.

Offices of Willige, Gibbs & Daniel, Incorporated, Real Estate, Loans,
and Insurance, 605 Thirteenth Street, N. W., Washington, D. C.

**Rents collected, loans negotiated, insurance placed.
Phone Main : 487, 488.**

\$100.00.

OCTOBER 22ND, 1904.

Received of Charles F. Johnson, a deposit of One hundred & no/100 dollars, to be applied as part payment in the purchase of — lot — in square —, with improvements thereon, known as 3036 O street, N. W. in the city of Washington, District of Columbia. The purchaser is required to make full settlement in accordance with the terms of sale within 30 days from this date, or the deposit will be forfeited. Price of property Fifty-four 184 hundred and fifty (\$5450) dollars. Terms of sale Seven hundred dollars (\$700) cash. Purchaser to assume trust of Forty-seven hundred and fifty dollars (\$4750) at 4½%. Property to be delivered free of all liens and incumbrances excepting the said first trust of Forty-seven hundred and fifty (\$4750) dollars. Title to be a good record title or deposit refunded. Rents, insurance, taxes and interest on deed of trust to be adjusted to date of transfer. Examination of title and conveyancing at the cost of purchaser. The forfeiture of deposit does not relieve the purchaser of the responsibility to comply with the terms of sale. This contract is made subject to approval by owner.

WILLIGE, GIBBS & DANIEL, INCORPORATED,
ERNEST H. DANIEL, *Agent, Secretary.*

Accepted by ———, *Purchaser.*

Approved by

ANNIE LEE BEVERLEY,
ELIZABETH LAWRENCE TALTY, *Owner-.*"

3 Q. Of course you had some preliminary talk about the matter before that was signed; I believe you testified to that? A. We agreed upon the terms of the contract about that date.

4 Q. But you had conversations with reference to it on previous dates? A. Just as I testified in my previous examination; yes.

185 5 Q. In your direct testimony, Mr. Daniel, you stated that at the time of the making of that contract, a deposit of one hundred dollars had been made with the defendants, and I requested that you produce the check showing that payment if you could find it. A. I did not make that statement, but I made the statement that one hundred dollars had been transferred from the account of the Guttinsson estate to the Charles F. Johnson fund,

and then that hundred dollars had been transferred from the Charles F. Johnson fund to the account of Mrs. Anna Lee Beverley, so that she might draw against it at any time.

6 Q. Well, was that the fact? A. The substance of it is that one hundred dollars had been transferred to her, and was held by us as agent.

7 Q. Well, when was the first payment made to her on account of the purchase of that property? A. The first payment made to Mrs. Beverley was, as shown by this check, October 26, 1904, a payment of seventy dollars.

8 Q. The check which you hold in your hand, dated October 26th? A. 26th, yes.

Mr. BOYD: Mr. Examiner, we offer this check in evidence, and request that it be copied in the record.

NOTE.—The same is marked by the Examiner, "Complainant's Exhibit No. 11."

COPY OF COMPLAINANT'S EXHIBIT No. 11.

No. 942.

"Willige, Gibbs & Daniel, Inc., Real Estate, Loans and Insurance,
605 Thirteenth St., N. W.

WASHINGTON, D. C Oct. 26th, 1904.

(N. A. B.)

Pay to the order of Annie Lee Beverley \$70 00 / 100 Seventy and
00 / 100 Dollars

WILLIGE, GIBBS & DANIEL, INCORPORATED.
ERNEST H. DANIEL, *Secretary*.

186 The American National Bank of Washington, D. C."

Endorsements on Back of said Exhibit.

Pay to the order of

Woodward & Lothrop

Annie Lee Beverley

Paid: 10: 29: 04 (Perforations.)

The National Metropolitan Bank
of Washington, D. C.

Woodward & Lothrop.

National Metropolitan Citizens Bank
of Washington, D. C.

Oct. 28 1904

Prior endorsements guaranteed.

9 Q. When was the next payment made, if any other payments were made, Mr. Daniel? A. On October 28th a payment of fifty dollars was made to Mrs. Annie Lee Beverley—

10 Q. How was that made?

WITNESS (continuing): on account of the sale of her premises, No. 3036 O street, this City.

11 Q. How was that made—by check? A. By check?

Q. Have you the check? A. I have the check in my hand.

13 Q. This check, dated October 28th, 1904? A. October 28th, 1904.

Mr. BOYD: We offer that in evidence also, and request that it be copied.

NOTE.—The same is marked by the Examiner, "Complainant's Exhibit No. 12."

187 COPY OF COMPLAINANT'S EXHIBIT No. 12.

No. 959.

"Willige, Gibbs & Daniel, Inc., Real Estate, Loans and Insurance,
605 Thirteenth St. N. W.

WASHINGTON, D. C., Oct. 28th, 1904.

(N. A. B.)

Pay to the Order of Annie Lee Beverley \$50 00 / 100 Fifty and
00 / 100 Dollars

WILLIGE, GIBBS & DANIEL, INCORPORATED.
ERNEST H. DANIEL, *Secretary*.

The American National Bank, of Washington, D. C."

Endorsements on Back of Said Exhibit.

Paid: 11:1:04 (Perforations.)

Annie Lee Beverley

R. Lappin.

Chas. Scott.

Chas. Dietz.

Second National Bank

Prior endorsements

Nov 1 1904

Guaranteed.

Washington, D. C.

14 Q. Have any further payments been made, Mr. Daniel? A. There was a payment on December 5 of fifty dollars, by check. This check is now in bank—at least I presume it is in bank, and as we do not settle up our account until the last day of the month, we are unable to produce the check at this time.

15 Q. You mean December, 1904? A. 1904, yes.

188 16 Q. Mr. Daniel, when you were testifying the other day, and also a few moments ago, you referred to the Charles F. Johnson investment fund, as I believe they call it. Will you kindly state what that fund is? A. That is a fund taken from the Guttinson estate to purchase, or in any manner invest in the interests of the Guttinson estate, and is named the Charles F. Johnson fund in order that such funds of the Guttinson estate as are moving or being invested can be clearly accounted for, especially as such funds are invested in the name of Charles F. Johnson.

17 Q. At the last session, Mr. Daniel, I also requested you to ascertain from your books whether or not any payments or advances had been made to the defendants Beverley and Talty prior to October 22nd, which you agreed to do. Have you or not made any examination? A. I have made the examination; yes, sir.

18 Q. Kindly state to the examiner the result of that examination. A. I find that no advances of any character were made to Mrs. Beverley or Mrs. Talty after the April of 1904, or previous to October 26th. I mean to say that in the time elapsing between March or April of 1904, and October 26th, 1904, no payments of any kind were made to the parties mentioned.

19 Q. Mr. Daniel, do you know from what source the defendants Beverley and Talty received the money with which Mr. Balderston made a tender to Mr. Tribby, which has already been testified about? A. I can only give an opinion—I can only give an opinion.

20 Q. Well, state what you—— A. I think Mr. Balder-
189 ston advanced that money.

21 Q. Mr. Daniel, did you or your firm, in any way or manner, agree to secure the repayment of this money to Mr. Balderston in the event that it should be accepted by Mr. Tribby? A. I had no authority to do such a thing, and I did not do any such thing.

22 Q. Was it not, as a matter of fact, understood, either expressly or impliedly, that as your firm had control of this and other property belonging to the defendants Beverley and 'Talty', that you would see, by reason of the control which you had of this property, that Mr. Balderston should not lose anything.

Mr. BALDERSTON: I object to this line of examination as being irrelevant and immaterial, and also leading, as the witness must necessarily be that of the complainant, under the circumstances.

A. Mr. Balderston at no time had any reason to believe, nor did our corporation nor any representative of it enter into any agreement in any shape to reimburse Mr. Balderston for any expenditure of any kind that he might make for or in the interests of Mrs. Annie Lee Beverley or Mrs. Elizabeth Lawrence Talty.

Mr. BOYD: That is all, Mr. Daniel.

Mr. BALDERSTON: No cross-examination.

ERNEST H. DANIEL.

Subscribed before me this 28th day of December, 1904.

P. H. MARSHALL,
Examiner in Chancery.

190 Whereupon CHARLES E. TRIBBY, the complainant, who has heretofore been sworn and examined herein, resumed the stand and was examined and testified as follows :

Direct examination.

By Mr. BOYD :

23 Q. Mr. Tribby, when you were on the witness stand before in your own behalf in this cause, you introduced copies of certain letters which were sent to the defendants Beverley and Talty. Will you state whether or not these copies were carbon copies of the original? A. No, they were not carbon copies; we use a copying book. We do not use the carbon sheets in my office; it is a press copy of the original—they were press copies of the originals.

24 Q. Press copies? A. Yes, sir, press copies.

25 Q. All of them which you introduced? A. All of them.

26 Q. In complainant's exhibit No. 7, which is a letter from you to Mrs. Annie Lee Beverley, which was in reply to a postal written you by Mrs. Beverley, you use this language: "You are aware no doubt that the rent of premises 3036 O Street is payable in advance and all rent due the coming 15th is for the month following, when the property will have been transferred." I want to know from what source you derived that information, that is, that the
191 15th of the month was the rent paying period of this property in controversy, and also that the rents were payable in advance, as you state in this letter? A. My transaction with Mrs. Beverley in regard to the trust—I did not know at the time I made this loan whether the rents were being paid in advance or not. I did not know, in fact, until I received the agreements from the firm of Attwell and Treadwell.

27 Q. And then you derived this information from those rent agreements? A. Yes.

28 Q. Do I understand that Attwell and Treadwell was the firm that had all of this property? A. They were the agent for one of the flats, and Moore and Hill, I think, had the other. They collected the rents for only one of them, and Moore and Hill collected the other.

29 Q. And you received these rent agreements, did you? A. I received those rent agreements before I wrote that letter.

30 Q. Did the tenants have knowledge of the fact that you had these agreements? A. Not until I had written.

31 Q. Written to whom? A. To both tenants.

32 Q. When did you write? A. I wrote the following day; I think it was the 6th of October.

33 Q. That is, when you say the following day, do you mean the day following the day on which you received the agree-
192 ments—the rent agreements? A. The following day after I received the rent agreements.

34 Q. In your previous testimony, Mr. Tribby, you also spoke of a conversation over the telephone with Mrs. Talty, in which you stated that she told you over the 'phone that she would come right down to your office——

Mr. BALDERSTON: I object to what he says—

Mr. BOYD (Continuing): Did she or not come in accordance with that promise?

Mr. BALDERSTON: I object to the witness testifying to what Mrs. Talty said over the 'phone.

A. She did not.

35 Q. Mr. Tribby, the record of your testimony with reference to the agreement, or rather the conversation which led up to the agreement between you and the defendants Beverley and Talty is not perfectly clear. Will you again kindly state briefly the substance of that conversation, that is, what they said to you with reference to selling the property, and what offers they had, and from whom, and what your replies were?

Mr. BALDERSTON: The question is objected to as leading.

A. On the day the second trust deal was closed, I think October 6th, Mrs. Beverley stated that she was trying to sell the property—that she had had several offers. I asked her what had she been offered. She said there was two firms had offered her fifty-three hundred dollars.

36 Q. Did she name those firms? A. One of the firms was Attwell and Treadwell, and the other was Moore and Hill. Shall I proceed?

193 37 Q. Proceed. A. I then asked her if she had decided to sell at those figures, and the answer was that she had not fully made up her mind, but she thought the property ought to be worth more money. I then questioned her as to the rents for the property, and then told her that if she decided to sell for fifty-three hundred dollars that I would buy the property and make no charge for commissions, for transfer, or any expenses whatever pertaining to the transfer of the property, and that I would also take all the interest off the second trust, expenses of recording, and so on. She then talked with her daughter for a while, and they were undecided that day. They told me they would be down the following afternoon and give me a decided answer. The following day they called and concluded to sell the property for fifty-three hundred dollars, and that is the time I gave her the first receipt that has gone down in the testimony.

38 Q. You are not in the real estate business, Mr. Tribby? A. I am not.

39 Q. Of course you were not charging her a commission then for the purchase of it?

Mr. BALDERSTON: I object to the question as leading.

40 Q. Well, I will ask you what you meant by that statement to her that you would not charge any commissions? A. Well, I have always thought—in fact I have been told, that the purchaser of property should be given a deed to the property, and the seller should pay for the deed, and also for the recording of it, and the second trust I was to eliminate all the interest.

194 41 Q. You yourself held that second trust? A. I did.

42 Q. And the actual amount of money advanced by you on that trust was to be considered as a part of the purchase price of fifty-three hundred dollars? A. The actual amount on the second trust advanced by me was to be applied on the sale of the property.

Mr. BOYD: That is all.

Cross-examination.

By Mr. BALDERSTON:

43 Q. Mr. Tribby, you stated in your direct examination that you were not in the real estate business; what business are you in? A. Well, I am——

Mr. BOYD: We object to that.

WITNESS (continuing): I have a license as a broker. I loan money, discount notes, buy commercial paper and do a general discounting business.

44 Q. How long have you been in that business?

Mr. BOYD: We object to that as incompetent, irrelevant and immaterial.

A. About eight or nine years.

Q. 45. Did you loan this money to Mrs. Beverley and Mrs. Talty for which she gave the second trust? A. I did not give it to her direct; I testified to that, but she——

46 Q. Well, you paid it for her benefit? A. Yes, she brought a statement in the office of the debts that she would like to be paid, and the small debt she owed me as well, and I settled all the
195 debts, and she received no money in actual cash.

47 Q. Did you pay the money yourself? A. Well; it was paid in my office. I do not transact everything that goes on in my office, but I saw it was done.

48 Q. It was done in your office, though? A. Yes.

49 Q. Under what name do you do business, Mr. Tribby?

Mr. BOYD: We object to that——

A. National Loan and Investment Company.

50 Q. Is that a partnership, or a corporation, or either?

Mr. BOYD: We object to that; it has nothing at all to do with this case.

A. Neither.

51 Q. Are you the sole owner? A. I am.

52 Q. Now, Mr. Tribby, in your direct examination you stated that the costs of recording, and some other costs, were usually for the seller to pay. Now don't you know as a matter of fact the purchaser pays all costs incident to the purchase of property? A. I do not know——

Mr. BOYD: We object to that because, the witness has said that he is not a real estate agent, and consequently is not competent to

testify to a question of that sort, and in his answer he said that he had been informed that was the custom.

53 Q. Now, you stated in your direct examination that on October 6th you questioned Mrs. Beverley and Mrs. Talty about the rents of the property. Now, what did you mean by that answer—what rents? A. Do you mean the amount of rents and when they were payable? They were talking the matter over, and whether they were leased, and so on.

Mr. BALDERSTON: That is all.

Redirect examination.

By Mr. BOYD:

54 Q. With reference to that last date mentioned, October the 6th, are you positive about that being the correct date, or are you speaking from the best of your recollection?

Mr. BALDERSTON: Question objected to as leading.

A. I am not positive as to it. I have never spent five minutes in this case studying it up and preparing myself to answer.

Mr. BOYD: That is all.

CHARLES E. TRIBBY.

Subscribed before me this 28th day of December, 1904.

P. H. MARSHALL,
Examiner in Chancery.

Mr. BALDERSTON: Mr. Boyd, I ask you as counsel for the complainant if you will consent to have this case placed upon the calendar this coming month, and if you will waive the usual five days notice?

Mr. BOYD: I consent that the case go on the calendar for the month of January, and am anxious that it shall be placed there and heard at the earliest possible date.

197 Mr. BALDERSTON: As the witness Mr. Daniel in this case desires to have the two checks dated October 26th and 28th 1904, introduced in evidence in this case, and also the contract dated October 22nd, 1904, returned to him, I ask that they be returned to Mr. Daniel after they have been copied in the record by the Examiner.

Mr. BOYD: I have no objection to the papers being returned, and I consent therefore that they be returned, with the understanding that no question exists as to the genuineness of the papers. Of course you will produce them if there is any question?

Mr. BALDERSTON: Oh, yes.

NOTE.—At this point an adjournment was taken until Saturday December 24, 1904, at 10 o'clock, A. M.

P. H. MARSHALL,
Examiner in Chancery.

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WASHINGTON, D. C., *December 24, 1904.*

Saturday, at 10 o'clock, a. m.

Mr. Boyd, of counsel for complainant, announced to the examiner that the testimony on behalf of the complainant herein was closed.

P. H. MARSHALL,
Examiner in Chancery.

198 *Decree.*

Filed June 22, 1905.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

CHARLES E. TRIBBY, Complainant,	}	Equity No. 24997, Doc. 55.
vs.		
ANNIE LEE BEVERLEY, ELIZABETH		
Lawrence Talty, and Charles F. Johnson, Defendants.		

This cause came on to be heard at this term of court upon the pleadings and testimony, and was argued by counsel; and thereupon, upon consideration thereof, it is by the court this 22d day of June, 1905, adjudged, ordered, and decreed as follows:

That the paper writing purporting to be a deed in fee simple, which was executed and delivered by the defendants Annie Lee Beverley and Elizabeth Lawrence Talty to their co-defendant Charles F. Johnson, on the 26th. day of October, 1904, and recorded on the *the* 28th. day of October, 1904, among the land records of the District of Columbia, which said deed attempted to convey lot one hundred and fifteen (115) in Charles F. Norment's subdivision of square twelve hundred and forty-two (1242), in the city of Washington, District of Columbia, as per plat recorded in the office of the surveyor for the District of Columbia, in Liber 28, folio 158, together with the improvements thereon, to the defendant Charles F. Johnson in fee simple, be and the same hereby is vacated and cancelled, and adjudged and decreed to be fraudulent, null and void.

It is further adjudged, ordered, and decreed that the complainant, Charles E. Tribby, pay to the defendants Annie Lee Beverley and Elizabeth Lawrence Talty, on account of the purchase price of said property, the sum of one hundred and ten dollars and nineteen cents (\$110.19), less the costs in these proceedings, to be taxed by the clerk; and thereupon, it is further adjudged, ordered, and decreed that the defendants Annie Lee Beverley and Elizabeth Lawrence Talty execute and deliver a deed in due form to the complainant, Charles E. Tribby, which shall convey to him the fee simple title in and to lot one hundred and fifteen in Charles F. Norment's subdivision of square twelve hundred and forty-two, in the city of Washington, District of Columbia, together with the improvements thereon; subject, however, to two certain deeds of trust on said

AVAILABLE

bound volume

property, the one having been given September 10th., 1903, to secure the payment of forty-seven hundred and fifty dollars (\$4750.00) in three years, and the other having been given October 5th., 1904, to secure the payment of three hundred and sixty-four dollars and eighty cents (\$364.80); the payment of both of said deeds of trust shall be assumed by the said Charles E. Tribby as the remainder of the purchase price of said property, and upon failure or default of the said Annie Lee Beverley and Elizabeth Lawrence Talty to execute and deliver the deed as herein directed within ten days from this date, then this decree shall stand, be considered and taken in all courts of law and in equity to have the same operation and effect as if the said conveyance had been executed and delivered in conformity with this decree.

WENDELL P. STAFFORD, *Justice.*

200 From the foregoing decree the defendants, in open court, note an appeal to the Court of Appeals and the penalty of the bond on such appeal, to operate as a supersedeas, is fixed at \$500.

WENDELL P. STAFFORD, *Justice.*

201 *Order Granting Leave to Charles F. Johnson for Severance.*

Filed July 18, 1905.

In the Supreme Court of the District of Columbia.

CHARLES E. TRIBBY	} Equity. No. 24997, — 55.
v.	
ANNIE LEE BEVERLEY ET AL.	

It being made known to the Court that the defendants Annie Lee Beverley and Elizabeth L. Talty decline to prosecute the appeal entered herein on their behalf, it is this 18th day of July 1905

Adjudged, ordered and decreed, upon motion of counsel for defendant Charles F. Johnson, that the said Charles F. Johnson be and he is hereby granted leave to sever in his appeal from his co-defendants in this cause, and prosecute his said appeal alone.

WRIGHT, *Justice.*

202

Memorandum.

July 18, 1905.—Appeal bond filed.

Order Extending Time for Filing Transcript of Record.

Filed September 1, 1905.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

CHARLES E. TRIBBY, Complainant,	} No. 24997, Doc. 55.
vs.	
CHARLES F. JOHNSON, Defendant.	

Upon motion of the defendant, Charles F. Johnson, by his solicitors, leave is hereby granted, and it is this 1st day of September

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from the original

1905, ordered that the time within which transcript of the record is to be filed in the above entitled cause be and is hereby extended to the 30th day of September, 1905.

By the Court:

ASHLEY M. GOULD, *Justice.*

203 *Order Further Extending Time to File Transcript of Record.*

Filed September 28, 1905.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

CHARLES E. TRIBBY, Plaintiff,	}	No. 24997, Doc. 55.
vs.		
CHARLES F. JOHNSON, Defendant.		

Upon motion of the defendant, Charles F. Johnson, by his solicitors, leave is hereby granted, and it is this 28th day of September, 1905, ordered that the time within which transcript of the record is to be filed in the above entitled cause be and is hereby extended to the 1st day of November, 1905.

By the Court:

HARRY M. CLABAUGH,
Chief Justice.

Directions to Clerk for Preparation of Transcript.

Filed October 9, 1905.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

CHARLES E. TRIBBY, Complainant,	}	No. 24997.
vs.		
CHARLES F. JOHNSON, Defendant,		

To the clerk of said court:

04 In making up the record for an appeal in the above entitled cause you will include the following:

1. Original bill of complaint and exhibits.
2. Answers of all defendants.
3. Replication.
4. All testimony and exhibits.
5. Decree.
6. Petition for severance.
7. Order for severance.
8. Both orders extending within transcript of record is to be led.
9. Memo. as to appeal bond.

WALTER C. BALDERSTON,
W. E. LESTER,
Counsel for Appellant.

13—1630A

Received copy of above this 6th day of October, 1905.

O. P. M. BROWN,
Att'y for Pl'tf.

Order Further Extending Time to File Transcript of Record.

Filed October 30, 1905.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

CHARLES E. TRIBBY, Complainant, }
vs. } No. 24997.
CHARLES F. JOHNSON, Defendant. }

205 Upon motion of the defendant, Charles F. Johnson, by his
solicitors, leave is hereby granted, and it is this 30th day of
October, 1905, ordered that the time within which transcript
of the record is to be filed in the above entitled cause be and the
same is hereby extended to the 30th day of November, 1905.

By the Court:

THOS. H. ANDERSON, *Justice.*

206 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John R. Young, Clerk of the Supreme Court of the District of
Columbia, hereby certify the foregoing pages numbered from 1 to
205, inclusive, to be a true and correct transcript of the record, ac-
cording to the directions of counsel herein filed, copy of which is made part of
this transcript, in cause No. 24,997, in equity, wherein Charles E.
Tribby is complainant, and Annie Lee Beverley *et al.* are defend-
ants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe
my name and affix the seal of said Court, at
Seal Supreme Court of the District of the City of Washington, in said District, the
Columbia. 28th day of November, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

207 Court of Appeals of the District of Columbia.

CHARLES F. JOHNSON, Appellant, }
vs. } No. 1630.
CHARLES E. TRIBBY, Appellee. }

In preparing the printed record in the above entitled cause the
clerk will omit therefrom the following parts of the type-written
record prepared by the Clerk of the Supreme Court of the District
of Columbia, to wit:

On page 13 omit caption, first eleven lines.

On page 16 omit caption.

On page 22 omit caption above last line.

On page 23 omit all after first three lines.
On page 24 omit all before last five lines.
On page 34 omit last six lines.
On page 35 omit first ten lines and last eighteen lines.
On page 70 omit last six lines.
On page 72 omit all before last eleven lines.
On page 94 omit all before last nine lines.
On page 113 omit last eleven lines.
On page 114 omit all.
On page 115 omit first eleven lines.
On page 128 omit first eight lines.
Omit pages 175, 176 and 177.
On page 178 omit first eight lines.
On page 179 omit last ten lines.
Omit pages 180 to 181.
On page 182 omit first sixteen lines.
On page 200 omit all after first five lines.
On page 201 omit first ten lines.

W. C. BALDERSON,
WHARTON E. LESTER,
Att'ys for Appellant.

Copy of within received this 5th day of December, 1905.

HOWARD BOYD,
Att'y for Appellee.

(Endorsed :) No. 1630. Charles F. Johnson, Appellant, vs. Charles E. Tribby. Appellant's designation of parts of record to be omitted in printing. Court of Appeals, District of Columbia. Filed Dec. 5, 1905. Henry W. Hodges, clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 1630. Charles F. Johnson, Appellant, vs. Charles E. Tribby. Court of Appeals, District of Columbia. Filed Nov. 29, 1905. Henry W. Hodges, clerk.